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BROADCAST REGULATION REFORM PROPOSALS

COMPLETED ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, CONSUMER PROTECTION, AND FINANCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 4726, H.R. 5242, H.R. 5584, H.R. 5585, H.R. 5752

BILLS TO AMEND THE COMMUNICATIONS ACT OF 1934

MAY 6, 1982

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BROADCAST REGULATION REFORM PROPOSALS

THURSDAY, MAY 6, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, AND FINANCE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 3:05 p.m., in room 2322, Rayburn House Office Building, Hon. Timothy E. Wirth (chairman) presiding.

Mr. WIRTH. Gentlemen, thank you very much for being with us.

This afternoon the subcommittee is beginning the first in a series of hearings examining the various broadcast regulation reform proposals which have been introduced by my colleagues on the subcommittee. Specifically, these proposals include: H.R. 4726 and H.R. 5752, introduced by Representative Swift; H.R. 5242, introduced by Representative Jim Collins; and H.R. 5584 and H.R. 5585, introduced by Representative Broyhill.

This afternoon we will focus on the license renewal process and the provisions contained in these legislative proposals to change broadcast license renewal procedures. We will also address the issue of what is the appropriate standard for a broadcaster to meet in order to warrant license renewal.

It is my belief, and one which I have stated many times before, that efforts to deregulate the broadcast industry must bear a direct relationship to underlying levels of competition in the audio and video marketplaces. We should not deregulate markets simply for deregulation's sake, but we should attempt to deregulate them when the level of competition warrants deregulation.

As the subcommittee's majority staff report concluded last fall, radio, in most markets, appears sufficiently competitive to warrant operating under greatly deregulated conditions. However, the video marketplace, while rapidly becoming increasingly competitive, is not yet sufficiently competitive to justify taking similar steps with respect to television.

Any reform of the license renewal process should, of course, relieve broadcasters of unnecessary regulatory burdens which the current license renewal process may impose, but such proposals must recognize and take into account today's competitive realities, while also fostering competition in the future.

One of the primary reasons advanced for reforming the existing license renewal process is to insure a degree of stability and certainty for incumbent broadcast licensees. Broadcasters have long contended, and I agree, that if they operate in a manner which

truly serves the public interest, they should have some expectancy that their licenses will be renewed. That is, they should be judged on their performance.

One of the major problems with the entire license renewal process is, and always has been, however, that no means of objectively measuring a broadcaster's performance exists. To the extent greater certainty in the renewal process is needed, there must be greater certainty—a more objective means of measurement—in the renewal standard itself.

Along these lines, my distinguished colleague—and resident broadcast expert—Mr. Swift, has introduced very thoughtful legislation which seeks to increase renewal certainty by quantifying what service in the public interest actually means in real terms—as opposed to applying some amorphous standard which lends itself to frequent challenge, and uncertain application.

Those proposals which attempt to create greater certainty in the renewal process through the implementation of a so-called two-step renewal process, without meaningfully clarifying the renewal standard, will serve only to insulate broadcasters from competitive challenges while eliminating a fundamental method of spurring high quality performance. Such is not regulation in the public interest.

Other proposals which further emasculate the public interest by completely repealing the public interest standard in the license renewal process, while guaranteeing license renewal to any broadcaster who merely obeys the law, are tantamount to stripping the American public of its own airwaves.

As the distinguished chairman of the Energy and Commerce Committee, Mr. Dingell, said during our hearings last December: "[S]ome of these proposals call for almost total deregulation of the broadcasting industry on the theory that the forces of the marketplace will suffice to protect the public interest—while broadcasters use a public resource under conditions tantamount to monopoly * * *. In the present political environment it is fashionable to blame the Government for most, if not all, of society's ills. That myopic view, unfortunately, often spawns simplistic and reflexive deregulation proposals advanced as an end in themselves without any real assurance that they will serve the public interest * * *."

As long as I am the chairman of this subcommittee, I will do everything I can to prevent the passage of such sweeping, ill-conceived deregulatory measures that do not provide some alternative means of protecting the public interest.

[Testimony resumes on p. 39.]

[The text of H.R. 4726, H.R. 5242, H.R. 5584, H.R. 5585, and H.R. 5752, and any agency reports thereon will be printed at this point in the hearing:]

I

97TH CONGRESS
1ST SESSION

H. R. 4726

To amend the Communications Act of 1934 to quantify public responsibility requirements for television and radio broadcasters, to deregulate certain aspects of television and radio broadcasting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1981

Mr. SWIFT introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To amend the Communications Act of 1934 to quantify public responsibility requirements for television and radio broadcasters, to deregulate certain aspects of television and radio broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Broadcasting Public Responsibility and Deregulation Act of 1981".

PUBLIC RESPONSIBILITY REQUIREMENTS

SEC. 2. Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new section:

"PUBLIC RESPONSIBILITY REQUIREMENTS

"SEC. 331. (a) For purposes of this section:

"(1) The term 'licensee' means any commercial television or radio broadcasting station licensee.

"(2) The term 'licensee evaluation system' means the licensee evaluation system established by the Commission in accordance with subsection (b).

"(3) The term 'licensee rating schedule' means the licensee rating schedule established by the Commission in accordance with subsection (c)(1).

"(4) The term 'program-related production cost' means any cost which is directly related to the production of a particular program. Such term does not include capital expenditures, salaries of regular employees, or general overhead expenditures which are incurred in the operation of the station of a licensee but which are not attributable to the production of any particular program.

"(5) The term 'public responsibility standard' means the public responsibility standard established by

rule by the Commission in accordance with subsection (d).

"(6) The term 'qualifying programing' means—

"(A) public service programing; and

"(B) programing which has a direct relevance to persons residing in the service area of a licensee, including broadcasts which (i) are transmitted at the same time as the events involved, or are produced and recorded at the same time as the events involved and are subsequently transmitted in substantially the same form as the original recorded form; and (ii) relate to news, sports, music, drama, religious programing, or public affairs programing.

Such term does not include any programing which originates outside the service area of the licensee and which is broadcast by such licensee in exchange for any monetary or other remuneration.

"(b)(1) The Commission, as soon as practicable after the effective date of this section but not later than six months after such effective date, shall establish a licensee evaluation system. The licensee evaluation system shall—

"(A) assign a point value to the broadcasting of any qualifying programing; and

"(B) award points to each licensee based upon each minute of qualifying programing which is broadcast by such licensee during each annual period of the license held by such licensee.

"(2) The point values included in the licensee evaluation system shall be weighted by the Commission so that additional points are awarded to each licensee based upon—

"(A) broadcasting of qualifying programing by such licensee during broadcasting periods which are assigned a preferred rating by the Commission under paragraph (3);

"(B) broadcasting of public service announcements regarding local issues, events, and activities;

"(C) broadcasting of the type of programing specified in subsection (a)(6)(B); and

"(D) the amount of program-related production costs incurred by such licensee.

"(3) For purposes of awarding additional points under paragraph (2)(A), the Commission shall divide the broadcasting day into designated broadcasting periods and assign a rating to each such period based upon the likely size of the audience for programing which is broadcast during each such period. The Commission shall assign preferred ratings to periods for which the likely audience size is substantially larger than the audience size for other periods.

"(4) The amount of additional points which licensees may be eligible to receive under subparagraphs (A), (B), (C), and (D) of paragraph (2) shall be established by the Commission by rule.

"(c)(1) The Commission, after completing the establishment of the licensee evaluation system in accordance with subsection (b), shall establish a licensee rating schedule. The Commission, for purposes of establishing the licensee rating schedule, shall—

"(A) review the most recent composite weekly programing logs filed with the Commission by licensees for periods preceding the date on which the licensee evaluation system takes effect; and

"(B) assign a rating to each licensee based upon the number of points which would have been awarded to such licensee under the licensee evaluation system if such system had been in effect during such periods.

The Commission, in reviewing composite weekly programing logs under subparagraph (A), shall designate the number of logs to be reviewed based upon the number necessary to insure a valid statistical survey.

"(2) The Commission, after establishing the licensee rating schedule under paragraph (1), shall—

"(A) review the rating assigned to each category of licensees for purposes of determining minimum point

levels in connection with the establishment of the public responsibility standard under subsection (d); and

"(B) determine, in accordance with paragraph (3), whether different minimum point levels should be established for different categories of licensees.

"(3) The Commission, in establishing the public responsibility standard under subsection (d), shall have authority to establish different minimum point levels for different categories of licensees if the Commission—

"(A) determines, based upon its review of the licensee rating schedule, that different programing practices and formats result in significant differences in the ratings assigned to different categories of licensees under the licensee rating schedule; and

"(B) makes a finding that the establishment of different minimum point levels for different categories of licensees (i) would not be contrary to the purposes of the public responsibility standard; and (ii) would not have an adverse effect upon the administration of such standard.

"(4) The Commission shall complete the actions required in this subsection as soon as practicable after the establishment of the licensee evaluation system, but not later than eighteen months after the effective date of this section.

"(d)(1) The Commission shall prescribe a rule which establishes a public responsibility standard. Such rule shall take effect as soon as practicable after the Commission carries out the actions required in subsection (c), but not later than thirty months after the effective date of this section.

"(2)(A) The public responsibility standard shall specify the minimum number of points which—

"(i) all licensees; or

"(ii) different categories of licensees, if the Commission elects to establish such categories in accordance with subsection (c)(3);

are required to accumulate under the licensee evaluation system during each license period established under subparagraph (B), in order to be in compliance with the public responsibility standard.

"(B) The minimum point requirements specified in the public responsibility standard shall be established on an annual basis, except that the Commission may establish such requirements on a quarterly basis if the Commission determines that such action will serve the public interest.

"(3) The Commission shall not have any authority under this Act to require any licensee to broadcast any particular type of programing or to establish any particular type of broadcasting format, except that only qualifying programing shall be eligible for the awarding of points to a licensee.

"(4) The rule established by the Commission under paragraph (1) shall establish procedures under which the Commission, acting upon the request of a licensee, shall—

"(A) issue a declaratory judgment regarding the category of licensees in which such licensee is included by the Commission (if the Commission elects to establish categories of licensees in accordance with subsection (c)(3)); and

"(B) issue a declaratory judgment regarding whether such licensee is in compliance with the public responsibility standard for the annual or other period involved.

Any such declaratory judgment shall be binding upon the Commission.

"(5) Any amendment by the Commission to the rule establishing the public responsibility standard may not take effect before the end of the one-year period following the date of the adoption of such amendment.

"(e)(1) Each licensee shall maintain records which are sufficient to indicate the number of points accumulated by such licensee for purposes of complying with the public responsibility standard. Each licensee, as soon as practicable after the close of each annual period (or after the close of each quarterly period if the Commission establishes quarterly periods under subsection (d)(2)(B)), shall certify to the Com-

mission that the number of points accumulated by such licensee during such period is sufficient for compliance with the public responsibility standard.

"(2) The Commission shall at all times have access to, and the right of inspection and examination of, the records which licensees are required to maintain in accordance with paragraph (1). Such records also shall be available for public inspection during regular business hours.

"(3) The Commission shall not have any authority to require any licensee to submit any annual report or other report relating to its programing policies and practices, other than the certification required in paragraph (1).

"(f)(1) The Commission, acting on its own motion, shall have authority to take such action as may be necessary for the purpose of determining whether any licensee is engaging or has engaged in any violation of the provisions of this section.

"(2) If any person files a complaint with the Commission which alleges that any licensee is engaging or has engaged in any serious violation of the provisions of this section, then the Commission shall take such action as may be necessary for the purpose of determining whether any penalty should be imposed upon such licensee by the Commission under this Act.

"(g)(1)(A) Any licensee who engages in a pattern of failures to comply with the public responsibility standard shall be subject to a civil penalty imposed by the Commission in an amount equal to the product of the highest per minute advertising rate charged by such licensee—

"(i) multiplied by one hundred, in the case of a first offense; and

"(ii) multiplied by one thousand, in the case of any subsequent offense.

"(B) The amount of such civil penalty shall be assessed by the Commission by written notice. The Commission shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this paragraph against any licensee—

"(i) to the extent necessary to prevent the insolvency or bankruptcy of such licensee, if the Commission determines that such compromise, modification, or remittance serves the public interest; or

"(ii) if the failure to comply is technical in nature or constitutes a minor or insubstantial violation of the public responsibility standard.

"(C) For purposes of subparagraph (A), the highest per minute advertising rate charged by any licensee shall be determined by the Commission and shall be based upon rates charged by such licensee at the time of the violation involved.

"(2) In any case in which—

"(A) a licensee is the subject of a finding by the Commission, after notice and opportunity for hearing, that such licensee has violated paragraph (1); and

"(B) such licensee has been made subject to civil penalties under paragraph (1) for two different violations during the five-year period preceding the date of such finding;

the Commission shall revoke the license of such licensee. Such licensee shall not be eligible to submit any application in connection with any subsequent assignment of such license.

"(3) Any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained in accordance with this section shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than five years, or both.

"(h) The Commission, not later than one year after the effective date of this section, shall submit a report to each House of the Congress. Such report shall contain—

"(1) a detailed statement of actions taken by the Commission to carry out the requirements of this section; and

"(2) an estimate of the date on which the public responsibility standard will take effect, together with an explanation of the basis for such estimate.".

BROADCASTING DEREGULATION RELATING TO ASCERTAINMENT AND PROGRAMMING REQUIREMENTS

SEC. 3. (a) Section 307 of the Communications Act of 1934 (47 U.S.C. 307) is amended by adding at the end thereof the following new subsection:

"(f) The Commission, in its administration of this Act regarding applicants for commercial television or radio broadcasting station licenses and regarding commercial television or radio broadcasting station licensees, shall not have any authority to establish or enforce any rules, orders, guidelines, policies, or procedures which require such licensees—

"(1) to engage in any activity for the purpose of ascertaining the problems, needs, or interests of persons residing in the service areas of the stations involved;

"(2) to limit the number of commercial advertisements which may be broadcast, or to limit the length of any such commercial advertisements; or

"(3) to establish or maintain any specific format for programing logs or other related records.".

(b) Section 303(j) of the Communications Act of 1934 (47 U.S.C. 303(j)) is amended by striking out "Have" and

inserting in lieu thereof "Except as provided in section 307(f)(3), have".

(c) Any rules, orders, guidelines, policies, or procedures of the Federal Communications Commission which are not consistent with section 307(f) of the Communications Act of 1934, as added by subsection (a), shall cease to have any force or effect on the effective date specified in section 10(b).

LICENSE TERMS

SEC. 4. (a) The first sentence of section 307(d) of the Communications Act of 1934 (47 U.S.C. 307(d)) is amended—

(1) by striking out "television";

(2) by striking out "five years" the first place it appears therein and inserting in lieu thereof "ten years"; and

(3) by striking out "(other than a radio broadcasting station)".

(b) Section 307(d) of the Communications Act of 1934 (47 U.S.C. 307(d)) is amended by striking out the second sentence thereof.

(c) The third sentence of section 307(d) of the Communications Act of 1934 (47 U.S.C. 307(d)) is amended—

(1) by striking out "five years" the first place it appears therein and inserting in lieu thereof "ten years";

(2) by striking out "television"; and

(3) by striking out "for a term of not to exceed seven years in the case of radio broadcasting station licenses,".

(d) The amendments made in this section shall apply to broadcasting licenses, and broadcasting license renewals, granted by the Federal Communications Commission after the effective date specified in section 10(b).

JOINT APPLICATIONS FOR CONSTRUCTION PERMITS AND LICENSES

SEC. 5. (a) Section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)) is amended by adding at the end thereof the following new sentence: "Any person who seeks to obtain a construction permit and a station license from the Commission shall be permitted to submit a joint application for the issuance of such permit and license.".

(b) Section 319 of the Communications Act of 1934 (47 U.S.C. 319) is amended by striking out subsection (c), and by redesignating subsection (d) as subsection (c).

COMPARATIVE HEARINGS

SEC. 6. Section 309(a) of the Communications Act of 1934 (47 U.S.C. 309(a)) is amended by inserting "(1)" after the subsection designation, and by adding at the end thereof the following new paragraph:

"(2) The Commission, in acting upon any renewal application filed by a broadcasting station licensee under section 308, shall not have the authority to consider any competing application submitted by any other person for operation of the facilities for which such renewal is sought.".

COMMISSION ACTION UPON LICENSE APPLICATIONS

SEC. 7. Section 309(b) of the Communications Act of 1934 (47 U.S.C. 309(b)) is amended by striking out "of the acceptance for filing" and inserting in lieu thereof "with respect to the receipt".

PETITIONS TO DENY LICENSES

SEC. 8. Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by striking out subsection (d) and subsection (e), and by redesignating subsection (f) through subsection (i) as subsection (d) through subsection (g), respectively.

FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

SEC. 9. (a) Section 315(a)(2) of the Communications Act of 1934 (47 U.S.C. 315(a)(2)) is amended by adding at the end thereof the following: "discussion, or debate, regardless of whether such interview, discussion, or debate is a regularly scheduled program,".

(b) Section 315(a)(3) of the Communications Act of 1934 (47 U.S.C. 315(a)(3)) is amended by striking out "(if the" and all that follows through "documentary)".

EFFECTIVE DATES

SEC. 10. (a) The provisions of this Act, other than the provisions specified in subsection (b), shall take effect on the date of the enactment of this Act.

(b) The amendments made in section 3 through section 9 shall take effect beginning on the date the rule prescribed by the Federal Communications Commission in accordance with section 331(d)(1) of the Communications Act of 1934, as added in section 2, is no longer subject to any administrative or judicial review.

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97TH CONGRESS
1ST SESSION

H. R. 5242

To amend the Communications Act of 1934 in order to establish new procedures for the renewal, assignment, and transfer of broadcast licenses, to provide certain deregulation of broadcast services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 1981

Mr. COLLINS of Texas introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To amend the Communications Act of 1934 in order to establish new procedures for the renewal, assignment, and transfer of broadcast licenses, to provide certain deregulation of broadcast services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Broadcast Licensing, Renewal, and Deregulation Act of 1981".

LICENSING PROCEDURE; RENEWAL PROCEDURE

SEC. 2. (a) Section 309(d)(1) of the Communications Act of 1934 is amended by striking out the last sentence thereof.

(b) Section 309 of the Communications Act of 1934 is amended by striking out subsection (d)(2) and subsection (e), by redesignating subsection (f) through subsection (i) as subsection (e) through subsection (h), respectively, and by inserting after subsection (d)(1) the following new paragraphs:

"(2) Not later than thirty days after receipt of the petition, the Commission shall review the petition, determine if the petitioner has established a prima facie case that the actions of the licensee or permittee, if they occurred, evidence such serious disregard for the provisions of this Act and the rules and policies of the Commission as to justify denial of the application, and notify both the petitioner and the licensee or permittee of its determination.

"(3) If the Commission determines that the petitioner has failed to establish a prima facie case of alleged actions which, if they occurred, would justify denial of the application, then the Commission shall dismiss the petition, except that the Commission may at its discretion consider imposition of other sanctions as provided for in this Act.

"(4) If the Commission determines that the petitioner has established a prima facie case that the actions of the licensee or permittee, if they occurred, would justify denial of

the application, then the licensee or permittee shall have an opportunity to file a written reply with the Commission and the petitioner not later than thirty days after receipt of notification of the determination of the Commission pursuant to paragraph (2) of this subsection.

"(5) If the licensee or permittee raises new assertions of fact in the written reply filed by the licensee or permittee under paragraph (4), then the petitioner involved shall have an opportunity to file a written reply to such assertions with the Commission and the licensee or permittee not later than twenty days after the filing of such reply by the licensee or permittee.

"(6) If the Commission finds, after a review of the petition filed under this subsection, any response thereto by the licensee or permittee under paragraph (4), and any reply filed by the petitioner under paragraph (5), that there are no substantial and material questions of fact, it shall either deny the application or deny the petition, except that the Commission may at its discretion consider imposition of other sanctions as provided for in this Act.

"(7) If the Commission finds that there is a substantial and material question of fact presented in the petition to deny, it shall expeditiously hold a hearing and shall within one hundred and eighty days after such hearing either deny such application or deny such petition, except that the Com-

mission may at its discretion consider imposition of other sanctions as provided for in this Act.

"(8) In any hearing conducted pursuant to this section, the burden of proof, and the burden of proceeding with the introduction of evidence, shall be upon the petitioner, except that the Commission by order may place the burden of proceeding with the introduction of evidence upon any other party.".

(c)(1) Section 309 of the Communications Act of 1934, as amended in subsection (b), is further amended by adding at the end thereof the following new subsections:

"(i) In any case in which a radio or television broadcast station licensee submits an application to the Commission for renewal of a license, the Commission shall grant the application unless it finds that the actions of the licensee evidence such serious disregard for the provisions of this Act and the rules and policies of the Commission as to justify denial of the application.

"(j) In acting upon any application for the renewal of any radio or television broadcast station license which is filed by a licensee with the Commission under section 308, the Commission shall not have authority to consider the application of any other person for the facilities for which renewal is sought.".

(2) Section 309(j) of the Communications Act of 1934, as added by paragraph (1), shall not apply to any application for the renewal of any radio or television broadcast station license which is filed with the Federal Communications Commission before October 20, 1981.

ASSIGNMENT AND TRANSFER OF LICENSES

SEC. 3. Section 310(d) of the Communications Act of 1934 is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking out "No" and inserting in lieu thereof "Subject to the provisions of paragraph (2), no";

(3) by striking out "; but in acting" and all that follows through "assignee"; and

(4) by adding at the end thereof the following new paragraphs:

"(2) Any person holding a construction permit or station license shall have authority to elect to transfer, assign, or dispose of such permit or license without first obtaining the Commission finding specified in paragraph (1). Any person electing to make such a transfer, assignment, or disposal shall notify the Commission within two business days following consummation of the transaction. The Commission shall give public notice of such notification within one business day

of receipt. Parties in interest who object to the transaction shall be required to file such objection, conforming to the requirements of a petition to deny as set forth in section 309(d)(1), within thirty days of the notice to the Commission by the parties to the transaction. The Commission shall dispose of any such filed objection in accordance with the procedures and timetable established in section 309(d).

"(3) In acting upon any transaction under paragraph (1) or paragraph (2), the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license involved to a person other than the proposed transferee or assignee.".

REPEAL OF CERTAIN PROVISIONS RELATING TO APPLICATION OF ANTITRUST LAWS

SEC. 4. Part I of title III of the Communications Act of 1934 is amended by striking out section 313 and section 314.

BROADCAST DEREGULATION

SEC. 5. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"BROADCAST DEREGULATION

"SEC. 331. Subject to any other applicable Federal law, the Commission is prohibited from requiring, by rule, regulation, or otherwise, radio or television station licensees to—

"(1) provide news, public affairs, locally produced, or any other programs;

"(2) adhere to a particular programing format;

"(3) ascertain the problems, needs, and interests of their service areas;

"(4) restrict or limit the amount, length, scheduling, or frequency of commercial announcements; and

"(5) maintain program logs which conform to any particular format, except that the Commission, by regulation, shall require that any program logs used by any such licensee in the normal conduct of its broadcast operations shall be retained for two years and made available for public inspection.".

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97TH CONGRESS
2D SESSION

H. R. 5584

To amend the Communications Act of 1934 to make certain revisions regarding the regulatory authority and administrative procedures of the Federal Communications Commission.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1982

Mr. BROYHILL introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Communications Act of 1934 to make certain revisions regarding the regulatory authority and administrative procedures of the Federal Communications Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Communications Act Amendments of 1982".

DECLARATION OF POLICY

SEC. 2. Section 1 of the Communications Act of 1934 is amended—

(1) by inserting "(a)" after the section designation;

(2) by striking out "For" and all that follows through "there" and inserting in lieu thereof "There"; and

(3) by adding at the end thereof the following new subsection:

"(b) The purposes of this Act shall be—

"(1) to make available to all the people of the United States efficient nationwide and worldwide telecommunications at reasonable charges;

"(2) to rely, whenever possible, on competition, rather than regulation, to determine the variety, quality, and cost of telecommunications;

"(3) to support the national defense, emergency preparedness, and the safety of life and property through the use of telecommunications;

"(4) to maximize efficient utilization of the electromagnetic spectrum;

"(5) to advance the technological and commercial leadership of United States suppliers of telecommunications in domestic and foreign markets;

"(6) to encourage cooperation between the Federal Government and the States in regulating telecommunications carriers, to recognize the appropriate jurisdictional authority of the States, and to utilize effec-

tively the regulatory expertise of State commissions; and

"(7) to promote interstate and foreign commerce.".

MEETING EXEMPTION

SEC. 3. Section 4(e) of the Communications Act of 1934 is amended by inserting "(1)" after the subsection designation, and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of law, any participation by one or more Commissioners in any conference, convention, or deliberation conducted in conjunction with members of foreign telecommunications administrations, or sponsored by the International Telecommunications Union, its subordinate or affiliated bodies, or any other international body of which the United States is a nation member, or which is created by a treaty or international agreement of which the United States is a signatory nation, shall not be considered a meeting of the Commission or a panel of Commissioners for any purpose.".

ALLOCATION OF FACILITIES

SEC. 4. Section 307 of the Communications Act of 1934 is amended by striking out subsection (b), and by redesignating subsection (c) through subsection (e) as subsection (b) through subsection (d), respectively.

RESTRICTION ON COMPARATIVE RENEWALS

SEC. 5. (a) The third sentence of section 309(e) of the Communications Act of 1934 is amended to read as follows: "The Commission may, in its discretion, require a full hearing in accordance with section 556(b) of title 5, United States Code, or it may take evidence from parties in writing, or it may receive evidence in such other form as it may determine will give all interested parties opportunities for submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment.".

(b)(1) Section 309 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsections:

"(j) In any case in which a radio or television broadcast station licensee submits an application to the Commission for renewal of a license, the Commission shall grant the application unless it finds that the actions of the licensee evidence such serious disregard for the provisions of this Act and the rules and policies of the Commission as to justify denial of the application.

"(k) In acting upon any application for the renewal of any radio or television broadcast station license which is filed by a licensee under section 308, the Commission shall not have authority to consider the application of any other person for the facilities for which renewal is sought.".

(2) Section 309(k) of the Communications Act of 1934, as added by the amendment made in paragraph (1), shall not apply to any application for the renewal of any radio or television broadcast station license which is filed with the Federal Communications Commission before January 26, 1982.

REPEAL OF ANTITRUST PROVISIONS

SEC. 6. Part I of title III of the Communications Act of 1934 is amended by striking out section 313 and section 314.

BROADCAST DEREGULATION

SEC. 7. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"BROADCAST DEREGULATION

"SEC. 331. Subject to any other applicable Federal law, the Commission is prohibited from requiring, by rule, regulation, or otherwise, radio or television broadcast station licensees to—

"(1) provide news, public affairs, locally produced, or any other programs;

"(2) adhere to a particular programming format;

"(3) ascertain the problems, needs, and interests of their service areas;

"(4) restrict or limit the amount, length, scheduling, or frequency of commercial announcements; and

"(5) maintain or make publicly available program logs of the station.".

CARGO VESSELS

SEC. 8. (a) Section 351 of the Communications Act of 1934 is amended to read as follows:

"SHIP RADIO STATION OPERATIONS

"SEC. 351. It shall be unlawful for any United States passenger vessel or for any United States cargo vessel 300 gross tons or over to be navigated in the open sea outside of a harbor or port; or for any ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio installation in operating condition, in compliance with applicable treaties and international agreements. Any vessel not subject to such treaties or agreements shall be equipped with appropriate radio facilities in accordance with rules which the Commission may promulgate.".

(b) Part II of title III of the Communications Act of 1934 is amended by striking out sections 353, 354, 355, 356, and 357.

(c) Section 381 of the Communications Act of 1934 is amended to read as follows:

"SEC. 381. It shall be unlawful for any vessel of the United States, transporting more than six passengers for

hire, to be navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, unless such vessel is equipped with an efficient radio installation.".

COLLECTION OF FORFEITURES

SEC. 9. Section 503(b)(2) of the Communications Act of 1934 is amended—

(1) by striking out "$2,000" and inserting in lieu thereof "$100,000"; and

(2) in the second sentence thereof, by striking out ", but the total" and all that follows through "by subparagraph (A)".

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97TH CONGRESS
2D SESSION

H. R. 5585

To amend the Communications Act of 1934 to make certain revisions regarding the authority of the Federal Communications Commission to regulate radio and television broadcast station licensees.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1982

Mr. BROYHILL introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Communications Act of 1934 to make certain revisions regarding the authority of the Federal Communications Commission to regulate radio and television broadcast station licensees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Broadcast Regulation Reform Act of 1982".

ADMINISTRATIVE SANCTIONS

SEC. 2. (a) Section 312(a) of the Communications Act of 1934 is amended to read as follows:

"SEC. 312. (a) It shall be unlawful for any licensee or permittee of the Commission to—

"(1) knowingly make false statements either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) willfully or repeatedly fail to operate substantially as set forth in the license;

"(3) willfully or repeatedly violate, or willfully or repeatedly fail to observe, the provisions of this Act and the rules or regulations authorized by this Act or by a treaty ratified by the United States; or

"(4) violate or fail to observe any final cease and desist order issued by the Commission under this section.

"(b) It shall be unlawful for any person to cause or aid and abet any violation specified in subsection (a).

"(c) The Commission may revoke any station license or construction permit for any violation of the provisions of subsection (a) or (b).".

(b)(1) Section 303(m)(1)(D) of the Communications Act of 1934 is amended by striking out "or communications containing profane or obscene words, language, or meaning,".

(2) Section 312(b)(2) of the Communications Act of 1934 is amended by striking out "or section 1304, 1343, or 1464 of title 18 of the United States Code,".

(3) Section 503(b)(1) of the Communications Act of 1934 is amended—

(A) in subparagraph (B) thereof, by inserting "or" at the end thereof; and

(B) by striking out subparagraph (D) thereof.

REPEAL OF EQUAL TIME PROVISIONS

SEC. 3. Part I of title III of the Communications Act of 1934 is amended by striking out section 315.

REPEAL OF THE FAIRNESS DOCTRINE

SEC. 4. Section 326 of the Communications Act of 1934 is amended to read as follows:

"PROHIBITION OF CENSORSHIP

"SEC. 326. Nothing in this Act shall be understood or construed to give the Commission any power of censorship over the content of communications, and no such regulation or condition, including any obligation to afford opportunity for the discussion of conflicting views on any issue, shall be promulgated or fixed by the Commission.".

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97TH CONGRESS
2D SESSION

H. R. 5752

To amend the Communications Act of 1934 to make certain revisions in procedures applicable to the renewal of broadcasting station licenses.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1982

Mr. SWIFT (for himself, Mr. COLLINS of Texas, Mr. BLILEY, Mr. LUKEN, Mr. MOORHEAD, Mr. MOTTL, Mr. TAUKE, and Mr. TAUZIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Communications Act of 1934 to make certain revisions in procedures applicable to the renewal of broadcasting station licenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 309(a) of the Communications Act of 1934 (47 U.S.C. 309(a)) is amended by inserting "(1)" after the subsection designation, and by adding at the end thereof the following new paragraph:

"(2)(A) The Commission, in acting upon any application for the renewal of a broadcasting station license which is filed by a licensee under section 308, shall grant such application

for renewal if the Commission finds that such licensee has operated the broadcasting station during the most recent period of license—

"(i) in a manner which serves the public interest, convenience, and necessity; and

"(ii) without serious violations of any provision of this Act or any rule or regulation of the Commission authorized by this Act or by any treaty ratified by the United States.

"(B) If the Commission determines, after notice and opportunity for a hearing, that a licensee specified in subparagraph (A) does not meet the requirements established in subparagraph (A), the Commission shall—

"(i) issue an order denying the application for renewal filed by such licensee under section 308; and

"(ii) accept and consider such applications for a construction permit as may be filed under section 308 for the broadcasting station operated by such licensee.

"(C) The Commission shall not accept and consider any application in accordance with subparagraph (B)(ii) unless and until the Commission has issued an order denying an application for the renewal of the broadcasting station license involved.".

SEC. 2. The amendments made by this Act shall apply to broadcasting station license renewal applications and con-

struction permits filed with the Federal Communications Commission under section 308 of the Communications Act of 1934 (47 U.S.C. 308) after March 8, 1982.

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Mr. WIRTH. I would ask any of my colleagues if they have statements they might like to make.

Mr. Collins.

Mr. COLLINS. Mr. Chairman, I thank you for holding this hearing on the various proposals for broadcast deregulation that have been introduced here in the House. A few minutes ago I explained I thought the automobile industry is one of the most overregulated industries in America, and I would definitely add the broadcasting industry to that list of overregulated industries. It is time that we repealed these needless Government regulations within the broadcast industry.

Moreover, there is very substantial support for deregulation. My own bill, H.R. 5242, has 75 cosponsors, includes 13 members of the Energy and Commerce Committee which have primary jurisdiction over communications issues. Mr. Swift's license renewal reform bill, H.R. 5752, has eight cosponsors from within the Telecommunications Subcommittee.

I thank you for holding this hearing today, and I hope that the hearing will be followed with a markup on these deregulation bills. Thank you, Mr. Chairman.

Mr. WIRTH. Mr. Swift.

Mr. SWIFT. No opening comments, Mr. Wirth.

Mr. WIRTH. Mr. Bliley.

Mr. BLILEY. No opening comments.

Mr. WIRTH. Mr. Scheuer.

Mr. SCHEUER. No, thank you, Mr. Chairman.

Mr. WIRTH. Our panel today includes the following gentlemen: Mr. Edward Fritts, chairman of the board of directors of the National Association of Broadcasters. Mr. Fritts, please extend our greetings to Mr. Wasilewski——

Mr. FRITTS. Thank you.

Mr. WIRTH [continuing]. Who has served for 17 years with the NAB and will soon be going out into private practice. I am sure we will see him in another incarnation in front of this subcommittee.

Also Mr. Henry Geller, former Assistant Secretary of Commerce and with the FCC, now a professor at Duke University, and a well-known and respected telecommunications policy expert.

Mr. Lee Loevinger, partner in the firm of Hogan & Hartson, and a former FCC Commissioner, representing the Newspaper Broadcaster Committee.

Mr. Gene Mater, vice president for policy for CBS, who has served many times in front of the subcommittee.

Mr. Andy Schwartzman, executive director of the media access project, who has also been before the committee on a number of occasions. And Mr. Doug Stephens, station manager of KDEN in Colorado, and recently elected member of the NAB board, and past president of the Colorado Broadcasters Association.

Gentlemen, thank you for being with us. I think you are aware of the rules and procedures of the subcommittee. We would ask you to summarize your testimony which will be included in full in the record, and we would hope that you could take 5 minutes to do that. We can then get into discussions between you and between you and members of the subcommittee. Perhaps we could start with Mr. Fritts and move right down the line.

Mr. COLLINS. Just before we start, I hope you all will condense your statements to 5 minutes.

Thank you, Mr. Chairman.

Mr. WIRTH. Mr. Fritts.

STATEMENTS OF EDWARD O. FRITTS, BOARD CHAIRMAN, NATIONAL ASSOCIATION OF BROADCASTERS; HENRY GELLER, WASHINGTON CENTER FOR PUBLIC POLICY RESEARCH; LEE LOEVINGER, NEWSPAPER-BROADCASTER COMMITTEE; GENE P. MATER, SENIOR VICE PRESIDENT/POLICY, CBS/BROADCAST GROUP; ANDREW JAY SCHWARTZMAN, EXECUTIVE DIRECTOR, MEDIA ACCESS PROJECT; AND DOUGLAS C. STEPHENS, PRESIDENT AND GENERAL MANAGER, KDEN BROADCASTING CO.

Mr. FRITTS. Thank you, Mr. Chairman. Our prepared statement is submitted for the record and I will take 4 to 5 minutes to summarize briefly and somewhat extemporaneously those remarks.

By way of background, I am chairman of the National Association of Broadcasters. I am also a broadcaster, the owner of eight small market radio stations in Arkansas, Louisiana, and Mississippi. Markets range from 5,500 people up to 25,000 people. I moved to Indianola, Miss., in 1963. There were 8,800 people there. The 1980 census shows 8,847 people. Certainly if I had a mellifluous voice like Congressman Swift or perhaps even yourself, Mr. Chairman, I might have risen from that position to perhaps even an anchorperson somewhere, but that was not to be.

We do appreciate the opportunity to testify, and moreover we appreciate these hearings being held. Obviously, the Senate has passed a bill on the subject and these hearings are becoming increasingly important.

Our statement today will focus on the dilemma posed by the comparative renewal process. Each of the bills pending before this subcommittee provides a solution. The problem, obviously, is not new. It has been with us. In 1974, for instance, both the House and the Senate passed bills resolving it, but procedural, technical difficulties prevented it from being enacted.

The NAB favors prompt legislative action to resolve the comparative renewal process by adopting a two-step approach as embodied in these bills. Up front we are not seeking insulation from the public's right to ask the FCC to deny license renewal. If a station acts irresponsibly and fails to operate in the public interest, and the public cannot resolve the problems at the station level, public participation in the renewal process is necessary and obviously appropriate as a last resort.

We also agree that the bad operator should be weeded out. The comparative renewal process, however, is a senseless, counterproductive and unfair process which we feel must be reformed. It involves the impossible dilemma of comparing an incumbent licensee's past performance with competing applicant's mere promises.

I would like to take just a moment to point out the procedural difference between a petition to deny and a comparative renewal. Once a comparative renewal is filed against a licensee, he has automatically imposed a lengthy comparative renewal process. Evidentiary hearings are automatic at that point, whereas in a petition to

deny, the commission has the right to look at the same information to make a determination without the lengthy comparative renewal process.

The comparative renewal process, I would estimate, for legal fees alone would start at somewhere in the neighborhood of $75,000 up. Stations in the size markets I operate in virtually could not afford that.

We have a station in Winnsboro, La., a market of 5,500 people. We had a lengthy, protracted labor problem at our station. I would compare the legal fees to it somewhat similarly to the legal fees that would be encountered in a comparative renewal procedure.

Finally, it reached its toll that we were able to resolve those differences, but the attorneys' fees were simply outrageous, and finally the lawyer from New Orleans called and said, "What are you going to do about it?"

I simply said, "I would be happy to mail the keys to the station to you at any time you would take them."

Unfortunately, he would not take the keys to the station.

There is a significant financial burden imposed in this comparative renewal process. Additionally, the process involves a drain on station personnel. If you take a market the size of Winnsboro, where you have six or eight employees, the manager of that operation has to wear many hats. He is the main salesperson, he is the chief public relations person, sort of the community cheerleader, if you will. The time that it takes for him to prepare and to provide information from his records to the attorneys takes away from the productive activities that he could be doing in serving his community as the licensee.

We feel that reforming the comparative renewal process will certainly not diminish the public voice in the renewal process. The petition to deny will remain the method by which the public can seek denial of license renewal, and certainly it will not reduce broadcasters' incentive to do a good job.

The ultimate result of a petition to deny, specifically the denial of a renewal, is the same as if the licensee has acted irresponsibly, then opening the process for new applicants for a facility in which promises can be compared with promises.

In summary, I would like to mention that we favor legislation to reform this comparative renewal process. We feel it is unfair, senseless, counterproductive, and almost un-American. The public will remain protected. The bad operator will be weeded out, and still subject to loss of his license. We would encourage passage of this legislation.

Thank you.

[Testimony resumes on p. 59.]

[Mr. Fritts' prepared statement follows:]

Statement of Edward O. Fritts
Chairman of the Board
National Association of Broadcasters
1771 N Street, NW
Washington, DC
before the
Subcommittee on Telecommunications,
Consumer Protection and Finance
Committee on Energy and Commerce
U.S. House of Representatives
May 6, 1982

I am Edward O. Fritts, Chairman of the Joint Board of Directors of the National Association of Broadcasters. NAB is the major national trade association of the broadcasting industry. Its membership includes 4,700 radio stations, 670 television stations, and all nationwide commercial broadcast networks.

I am also President of Fritts Broadcasting, which owns and operates eight radio stations in Arkansas, Louisiana, and Mississippi. I have spent my entire life in broadcasting, witnessing for many years an alarming accretion of broadcast regulation and more recently eras of reregulation, deregulation, and now, "unregulation." For example, proposals initiated by then FCC Chairman Charles Ferris to deregulate radio and replace lengthy, burdensome renewal application forms with a "postcard" renewal have been implemented by the present Commission under its new Chairman, Mark Fowler. Such actions by the "expert agency" charged with assuring operation of broadcast stations in the public interest dramatically illustrate the broad consensus that substantial broadcast deregulation is sound public policy. They recognize that paperwork, mechanistic procedures, and arbitrary government standards have nothing to do with broadcast service to the public. In fact, as

any broadcaster would contend, they do little more than distract and divert broadcasters in their efforts to develop programming responsive to consumer demands in their communities.

The numerous bills pending before this Subcommittee recognize this basic reality. They, too, in various ways would deregulate broadcasting and permit broadcasters to focus their efforts on providing an attractive and beneficial service to their communities undistracted by needless, arbitrary governmental strictures.

NAB appreciates your conducting these hearings to further develop the record established in hearings last December. While the FCC has taken some significant steps to eliminate outmoded, counterproductive regulations, Congress also must act, in some cases, to confirm and solidify what the FCC has done. There are other areas where only Congress can initiate reform, where statutory change must precede regulatory change.

At last December's hearings, much of the testimony and ensuing dialogue dealt with program content regulation and the political broadcasting and fairness doctrine provisions of the present law. These are areas where statutory change is necessary. While NAB deeply and firmly believes these provisions are inhibiting and intrusive, this statement today will focus on another area where statutory change in not only necessary, but long overdue.

The problems posed by the comparative renewal process and the need to reform it are hardly new. Indeed, eight years ago, both houses of Congress passed legislation to eliminate comparative renewals by overwhelming majorities. Only a procedural technicality prevented

this legislation from being enacted. Now, each of the broadcast bills before this Subcommittee, as well as S.1629, recently passed by unanimous consent in the Senate, contains provisions to reform the comparative renewal process.

NAB's position on this is clear. First, the present comparative renewal process is a serious and continuing problem which must be resolved as quickly as possible. It is a problem not only for broadcasters, but also for the FCC, which has been forced to administer it. Second, the various legislative proposals to reform the comparative renewal process by establishing a "two-step" procedure would provide a workable and equitable solution to the problem. Third, the ability of the public and the FCC to weed out bad operators and promote quality broadcast service would not be compromised by establishment of a "two-step" renewal procedure.

Anyone who has been involved in the comparative renewal process appreciates the costs and difficulties it poses. By its very nature, the process presents the FCC and the courts with an impossible dilemma. The present law requires the FCC to compare the incumbent licensee's performance with the mere promises of a new applicant for the same facilities. Two FCC Commissioners, Benjamin Hooks and Joseph Fogarty, borrowing from Sir Winston Churchill, referred to this choice as:

> ...a riddle within an enigma within a conundrum. The riddle: by what standards is a renewal applicant to be measured. The enigma: by what standards is a renewal challenger to be measured. The ultimate conundrum of course is, even assuming the measurement of such respective standards, how can there be constructed a matrix which can be used to measure and compare two largely unrelated properties: an empirical

property (an existing record) and an *a priori* property (a set of applicant pledges)?

Much more than a rigorous intellectual exercise is involved here, however. In the case of comparative renewals, this abstract, theoretical challenge of comparing performance with promise has become all too real. The Commission and the courts have grappled with numerous comparative renewal cases. They have struggled along a tortuous course seeking to establish order, but ultimately creating chaos. As a result, they established a process more subject to abuse than legitimate use, destabilized the broadcast industry, and left the proverbial sword of Damocles dangling precariously over the head of every broadcast licensee in the country, even those with records of the most exemplary service.

How did this all come about?

In a nutshell, the Commission in 1969 voted 3-1 to deny the renewal application of Boston's WHDH-TV and award the license to a competing applicant. In the process, as Harvard Law School Professor Louis L. Jaffe observed, the Commission "(overruled) an administrative practice of at least eighteen years standing." While communications lawyers and legal scholars will debate for years to come the actual rationale of the Commission's decision to revoke the WHDH license and the courts' reasoning in upholding that decision, the practical effect of the decision was substantial. It called attention to the Commission's use of comparative criteria which were designed for judging among competing applicants for *new* stations. Those criteria were: (1) diversity of media ownership; (2) integration of ownership and management; and (3) local ownership.

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The use of those criteria in comparative renewal cases led widespread use of the comparative renewal process and exacerbated the problem of the "riddle within an enigma within a conundrum." The use of the so-called comparative criteria in a renewal setting coupled with the denial of the WHDH renewal application was a signal to other would-be competing applicants. They realized how easy it would be to tailor their applications to the FCC's comparative criteria and find existing stations which were relatively less favored by such criteria. Ideally, a group of local investors with no other media interests would file a competing application and propose to be involved in the day-to-day management of the station. The ideal target was an absentee owner with other media interests. In terms of the past record of the licensee, the competing applicant always could promise more. While NAB does not question the good faith of competing applicants and their belief they could provide better service, good intentions do not guarantee superior results. Moreover, it is also true that many of the stations which found competing applications on their doorsteps at renewal time were major market VHF stations -- which would have been very expensive to buy through normal negotiations. The comparative renewal process -- even with the extensive costs of hearings and the inevitable court appeals -- presented the opportunity to get a station at a "price" well below that set by the marketplace.

Numerous competing applications were filed in the wake of the WHDH decision. As the Commission struggled and the courts meddled with the comparative renewal problem, numerous broadcasters suffered

untold costs in comparative renewal proceedings, and all broadcasters came to realize that regardless of how outstanding their record of service might be, they were vulnerable to a competing application tailored to place them at a disadvantage.

While the chaos of the seventies has subsided to some extent, the legal setting has not changed. The patent unfairness of the process remains the same. Competing applications still can be tailored to place an incumbent licensee at a disadvantage, and promises always will be easy to make.

From a public policy point of view, this approach makes little sense. First, the best indicator of future performance -- actual performance of the incumbent licensee -- is accorded relatively lesser weight. If the alleged purpose of the comparative renewal process is to encourage licensees to provide the best possible service, it is ludicrous to place extraneous factors in the forefront when comparing the renewal applicant and the challenger. Why look to theoretical determinants of the service when the broadcaster will provide the best evidence of performance -- actual past performance? It is all the more senseless because the incumbent licensee already has passed muster on the ownership and management criteria when the original application to build or purchase the station was granted. A second comparison on these criteria is a form of double jeopardy which is unfair to the renewal applicant.

Some may say these problems are illusory, that, in fact, the Commission rarely has denied a renewal application in favor of a competing applicant.

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The threat of actually losing a license, however, is only a part of the senseless, unfair burden posed by comparative renewals. Even if an incumbent licensee prevails, the burden of going through a hearing to compare the incumbent with the challenger could be literally overwhelming. For example, when WCAU in Philadelphia was challenged in 1972 and went through a comparative hearing, CBS stated that

> The proceeding lasted more than three and a half years, involved 77 witnesses, 90 days of hearings before an FCC Administrative Law Judge and more than 25,000 hours of outside counsels' time. In addition, there were uncounted hours of time of CBS management and of its in-house legal staff.

Some comparative renewal proceedings commenced shortly after the WHDH decision 13 years ago still have not been resolved! Given the present cost of legal counsel at rates often in excess of $100 per hour, a similar experience involving 25,000 hours of lawyers' time would cost a licensee in excess of $2.5 million dollars in legal fees alone. Under present law, which requires a comparative hearing once a competing application is filed, the mere filing of an application would impose enormous litigation burdens on a station.

Perhaps some broadcasters could, as some have, absorb this enormous financial drain, but, what about broadcasters in smaller communities with narrower operating margins?

The Fritts Broadcast stations are located in Helena, Arkansas (population 10,415), West Helena, Arkansas (population 11,007), Indianola, Mississippi (population 8947), Tupeolo, Mississippi (population 20,471), and Winnsboro, Louisiana (population 5349). The following table shows the median revenue, profit, and profit margin figures for similarly

situated stations in 1980 according to the NAB 1981 Radio Financial Report:

Station Type	Market Population	Revenue	Profit	Profit Margin
AM	10,000 - 25,000	$332,600	25,400	7.65%
FM	Under 25,000	163,700	(7000)	(4.30%)
AM-FM	Under 10,000	243,400	12,800	5.24%
AM-FM	10,000 - 25,000	378,700	11,500	3.03%
Daytime only AM	Under 10,000	134,400	4000	2.94%
All Stations	All markets	376,600	15,600	4.13%

It is impossible to imagine a station in a small market like Winnsboro surviving a comparative renewal. The resources simply are not available to finance an extended comparative hearing. Realistically, a station in such a situation would face the unhappy possibility of having to throw in the towel. For example, in 1972, a competing application was filed against radio stations in Stamford, Connecticut. This year, with the case still pending before the FCC, the incumbent licensee settled the case (with the FCC's approval) by selling out to the competing applicant. While the case was pending the station found it very difficult to operate. Qualified personnel were hard to attract and retain. The station necessarily became extremely sensitive to threats of complaints and was forced to rely heavily on lawyers even outside the actual comparative proceeding. Finally, the licensee simply could wait no longer for resolution of the case and settled. Where is the benefit to the public where station revenues are drained by such a senseless process?

Where is the sense? Where is the logic in leaving every broadcasting station in this country, even those with the most outstanding records of performance, vulnerable to a legally mandated and extraordinarily expensive comparative proceeding? Again, insult is added to injury

in the process because the licensee's performance and service to its community becomes but one of a number of other extraneous criteria. Ironically, these extraneous criteria may take precedence over program performance, and the ultimate sanction -- loss of license -- still may befall a licensee which has lived up to or surpassed its commitments to operate in the public interest.

If the purpose of regulation is to encourage performance -- service to the licensee's community -- then the licensee's performance should be the issue front and center at renewal time.

Legislation before this Subcommittee would refocus the renewal process on licensee responsibility and eliminate the impossible task of comparing licensee performance with a renewal challenger's promises. Also, extraneous factors unrelated to the actual performance of the licensee no longer would be considered at renewal time. A "two-step" process would be established under which an initial judgment would be made on whether the incumbent licensee merited renewal. If the incumbent licensee's record were satisfactory, then its renewal application would be granted. No competing application could be considered. On the other hand, if the incumbent licensee's record failed, after a full hearing, to meet the specified standard, its renewal application would be denied and competing applications for the facility could be accepted and considered.

NAB fully supports this approach to resolving the comparative renewal problem. It would be beneficial to broadcasters and their ability to serve the public. At the same time, the public's ability to question a licensee's performance would not be reduced.

First, the present dilemma faced by the FCC in comparing licensees' performance with competing applicants' promises would be eliminated. No longer would the FCC and the courts have to struggle with "the riddle within an enigma within a conundrum." A solid record of performance sensibly would take precedence over hollow promises. If licensee performance were inadequate, then the Commission could compare promises with promises in considering new applicants for the facility.

Second, renewal would be the reward for service. The current unfair process would give way to one where the focus is on licensee performance. Stations which served their communities responsibly would be renewed. Those that did not would not be renewed.

The stability afforded by a process devoid of extraneous criteria and impossible comparisons would enhance the ability of stations to serve the public. Long-term planning would be conducted without fear that the station's license might be lost due to consideration of factors unrelated to licensee performance. Even the need to defend against a competing application -- likely a multi-million dollar effort -- not only would undermine long-term planning, but also result in diversion of financial resources to litigation expenses. Thus, by rewarding service and establishing an environment in which long-range planning is meaningful and financial resources are funnelled into station operation rather than litigation costs, the "two-step" approach would serve to enhance broadcast service to the public.

Finally, elimination of the threat of competing applications would remove the cloud of instability which has hung over the broadcast

industry since 1969. Business decisions are much more difficult in the shadow of such a cloud. For example, the ability to secure credit or investor financing or to hire personnel is diminished when a station faces the possibility of a comparative hearing or loss of license every five or seven years. While the number of competing applications has fallen off in the past few years, the door remains open and this dark cloud will continue to float ominously over the industry unless the law is changed.

NAB recognizes that concern has been expressed that the "two-step" approach to renewals would remove a potent weapon from the hands of the public and lessen broadcasters' incentive to act responsibly in serving their communities. This concern is unfounded. The public will remain fully able to raise concerns about the adequacy of stations' service.

Initially, the basic thrust of the "two-step" approach is to refocus the renewal process squarely on the performance of the licensee, not to retract from examination of the licensee's record. Good, responsible broadcasters will be rewarded. The so-called "bad operators" -- the unfortunately inevitable rotten apples in every barrel -- will find their licenses in jeopardy. This is as it should be.

The public voice in the renewal process will not be diminished. The existing petition to deny process will be maintained. It is a process used more often by the general public and public interest groups than the comparative renewal process as a "last resort" in dealing with stations after discussions at the station level have failed to resolve differences.

The petition to deny enables members of the public to call the FCC's attention to a licensee's failure to perform responsibly during its preceding license term. It focuses on the licensee's record. It urges, and can result in, the same sanction as the comparative process -- denial of license renewal. Ultimately, it can lead to the same end result, the licensing of the station to another party.

The comparative renewal process has rarely been used as a means of expressing public dissatisfaction with a licensee's performance because the comparative renewal route involves a full-fledged application to operate the facility. Parties filing competing applications must possess financial resources sufficient to cover not only the costs of participating in a comparative hearing, but also the cost of constructing a station and commencing station operation. Considerable financial risk is involved. Failure to prevail in a comparative hearing would mean a multi-million dollar investment with no return at all. Success means a considerable capital investment and assumption of the financial risk attendant to beginning a new business. For example, the two groups which originally challenged WHDH's license renewal estimated minimum cash requirements exceeding four million dollars just to construct and operate their station for three months. Similarly, the competing application seeking the facilities of WPIX in New York specified the availability of over four million dollars in new capital and loans plus nearly two million dollars in deferred payments. Relevant information from a competing application filed in 1970 is appended as an additional illustration of the financial burden and risk of filing a competing application.

(All of these examples reflect estimates in 1970 (or prior) dollars. Similar estimates today would be considerably higher!) In essence, a competing application is a proposal to enter a business and requires the financial resources to do so. Most members of the public simply are not in a position to assemble the necessary resources to pursue broadcast station ownership.

In contrast, the petition to deny is essentially a complaint. The resources to file a petition to deny and the risk assumed by the filing party are considerably less than in the case of a competing application.

The petition to deny, which can be and has been more widely utilized to express public dissatisfaction with licensee performance, will remain as an effective regulatory check on broadcast service to the public. In hearings before the Senate Subcommittee on Communications last year, then FCC Acting Chairman Robert E. Lee testified:

> It should be noted that although the renewal procedure would be changed, it would not result in a significant change in the final disposition of renewal applications. That is, of the 20 television license renewals the Commission has denied, only one has been based in any way upon the incumbent's comparative qualifications. Where applicants filing competing renewal applications have prevailed it has been due to the incumbent's failure to meet basic licensee qualifications. These renewal applications would have been denied even in the absence of a competing applicant. This fact provides even further support for the proposed legislation.

Similarly, the power of the FCC to revoke licenses in mid-term will persist as a similar assurance that irresponsible broadcasters do not remain unchallenged.

Thus, shifting to a "two-step" renewal procedure hardly would reduce the ability of the public and the FCC to deal with poor performance by broadcast licensees.

The bills pending before this Subcommittee contain slightly different standards for determining whether a renewal application should be granted under the "two-step" approach to renewals. Without entering into a highly technical discussion of the pro's and con's of the various bills in this respect, NAB wishes to stress that any such standard should not embrace detailed program guidelines or minimum percentages. Licensees should retain the widest possible discretion in meeting their public interest obligation.

The great injustice and detriment, to say nothing of the regulatory dilemma posed by the present comparative renewal process, have remained unresolved for too long. The case for reform of this process through establishment of a "two-step" procedure is compelling. NAB urges prompt passage of legislation to resolve this problem.

Legislation to codify the FCC's deregulation of radio and to deregulate television also should be enacted without delay. In the case of both radio and television, the time for specifying minimum program guidelines and maximum commercial guidelines, requiring a rigid, mechanistic process to acquaint broadcasters with their potential audiences, and forcing stations to compile and retain an abundance of useless information in program logs has passed. Stations broadcast more of the supposedly favored nonentertainment program types, and fewer commercial minutes than FCC guidelines have specified. They know their communities because

that knowledge is central to their ability to compete -- to provide the sort of programming which will serve community needs, interests, and tastes, and, thus, attract an audience. Finally, while stations always will compile and retain logs for billing purposes, the recording of much extraneous information -- useless to the station and the public alike -- pursuant to precise governmental dictates, never has served and never will serve any legitimate public policy purpose whatsoever.

NAB emphasizes that the specific deregulatory proposals embodied in the various bills before this Subcommittee cover a narrow range of demonstrably anachronistic, unnecessary requirements. Again, for example, requiring TV stations to limit commercials to 16 minutes per hour is meaningless and unnecessary when stations invariably broadcast less than 16 minutes per hour.

NAB urges this Subcommittee to act favorably and quickly on proposals to reform the comparative renewal process, and deregulate radio and television.

Appendix

FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT	CENTRAL FLORIDA ENTERPRISES, INC.

The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.

IF CONTEMPLATED EXPENDITURES ARE LESS THAN $5,000 COMPLETE PARAGRAPH 1 OF SECTION III ONLY.

1 a Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile and STL equipment, non-technical studio furnishings, etc., should be included under "Other Items" below, and itemized.

	COLUMN I (USE ONLY WHEN ITEMIZING)	COLUMN II (TOTAL)
Transmitter Proper: (Including Tubes)	$	$ 153,000
Antenna System: (Including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting.)		495,000
Studio Generating Equipment: (Including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger.) STL equipment, etc., included in Other Misc. below.		--
Monitoring and Test Equipment: (Including frequency monitor, phase monitor, modulation monitor, oscilloscope, dummy load, vectorscope, video monitors.)		35,000
Program Origination Equipment: (Including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment.) - including mobile van		1,089,000
Acquiring Land:		16,632
Alterations, Remodeling or Constructing Buildings: Lease (See Exh. 4-A.)		--
Other Items (Itemize Below)		
Legal Costs:	150,000	
Engineering Costs:	10,000	
Installation Costs:	216,400	
Miscellaneous:	400,000	
Other Items:		776,400
Total Construction Costs:		2,565,032
Estimated Cost of Operation for First Year		1,434,390
Additional Costs To Be Met By Applicant: See Exhibit 4-A		2,947,897
Total Expenses For First Year		5,947,897

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...ete the following estimates on a Projected Statement III, including in the ... for the applicant's new or actual ... itemization of cost of operation for the first year, including cost of ... proposed programming, as Exhibit No. 4A to this application.

The proposed construction is to be financed and paid for in the following manner. The financial plan should provide for sufficient funds to construct the station and operate it for a period of one year. If the applicant plans to rely on revenues from operation of the proposed station for any portion of operating expenses, supply as Exhibit No. 4B data in support of revenue estimate.

	COLUMN I (USE ONLY FOR LOANS AND DEFERRED CREDIT)	COLUMN II (NET TOTAL)
Existing Capital:	$	$ 240,000
Paid-In Capital		250,000
Loans from Banks or Others	520,000	
Less repayments of principal and interest in 10 % due during first year). (bank loan only)	10,000	
Net Total Available from Loans		510,000
Profits from Existing Operations		---
Donations Interest from funds on deposit.		25,000
Other Sources (Specify) Revenues from operation from proposed facility (See Exh. 4B.)		1,900,000
Deferred Credit from Equipment Supplier	1,863,000	
(Note If 1st payment is due upon shipment, include 14 monthly payments. If due in 30 days, 13 monthly payments. If due in 60 days, 12 monthly payments, etc.)		
(a) Less Down Payment 25 %	465,750	
(b) Less 1st Year Payment to Principal	---	
(c) Less 1st Year Interest @ 10 %	139,725	
Net Deferred Credit Available		1,257,525
Net Total Available		4,182,525

a. Attach as Exhibit No. ___ a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. ___ schedules which give a complete analysis of such items.

b. Attach as Exhibit No. ___ a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from any source.

c. Furnish the following information with respect to the applicant only. If the answer is "None" to any or all items, specifically so state.

a. Amount of funds on deposit in bank or other depository: $	b. Name and address of the bank in which deposited (include ZIP Code)

Name and address of the party in whose name the money is deposited (include Zip Code)

Condition of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition).

Are the funds deposited for the specific purpose of constructing and operating the station? ___ Yes ___ No
If not, explain.

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Mr. WIRTH. Mr. Geller.

STATEMENT OF HENRY GELLER

Mr. GELLER. Thank you, Mr. Chairman. There are two types of legislation here. One of them deals with the comparative renewal and the other type deals with sweeping away broadcast public trustee content regulation. I will talk about both of them but the second type first.

I favor deregulatory measures, as I said in my December 9 testimony on some bills that were similar to these. I do so for three reasons.

First, there are first amendment strains. Second, and more important, the public trustee regulatory scheme has been a failure. It is ineffectual, it is a charade. It is like a wrestling match; it is very amusing to the public and very lucrative to the communication bar, but I don't think it serves the public interest very well. Third and most important, I think you can turn to alternative systems, what you mentioned, Mr. Chairman, that are much more effective, and I think it is time to do so.

Let's take radio first. There are 8,000 commercial radio stations, so you have a radio of abundance. They supply a great deal of entertainment program to the American people, short news, school closings; they do a good job, but the commercial marketplace in radio will not supply everything the public interest needs. It won't supply educational programing for children. It won't supply in-depth informational programs, gavel-to-gavel coverage of the Panama Canal debate, programs for the blind, cultural programing, Shakespeare; it won't supply any of that. What does supply such programing is public radio.

What I have talked about is not elitism. It is not elite in a democracy to have an informed electorate, and therefore to have informational programing. It is not elite to have educational programs for children, any more than it is to have libraries or public schools. This is something that is very necessary. So if you went to this commercial radio system and said, "We relieve you of your obligation, for which you volunteered, to be a public trustee; you don't have to do that at all. But since we are putting you on a channel and enjoining everybody else, we want in exchange for that a grazing fee, a spectrum usage fee."

Broadcasters would enter into a contract with the Government for a long lease, 25 years, and would give some percentage of gross revenues, 1 or 2 percent; you can no longer auction. The money you get from that can be used to support public broadcasting; you can use it to support minority ownership. It would go into the general treasury and Congress can use it any way it wants. You will now have a system that works for you.

Public radio will do exactly what you want it to do in educational programing and other fields, and the commercial system would be free. It would largely continue to do what it is doing today, but it would be free of these first amendment concerns.

There would be other regulations, technical regulations, multiownership regulations; any person shouldn't own two stations in the same community; EEO regulations. But you could relieve a

great deal of this first amendment burden. If this system worked in radio, you could then do it in television.

Let me turn in the brief time I have to talk very quickly about the comparative renewal. Its purpose is commendable to spur substantial meritorious service instead of mediocre service just meeting the public interest. However, it has been a failure. The Commission has labeled it a failure, the courts have also; the incumbent always wins. So far the incumbent has never lost one of these. It is, again, just a joke.

Since its purpose was to spur meritorious service and it hasn't worked, you would be much better off scrapping it and simply requiring every broadcaster to render meritorious service. The real issue is the one you raised, Mr. Chairman, that is, objective standards that define what is meritorious, because we are in a very sensitive first amendment programing area here.

There ought to be objectivity—some certainty, here.

I think what you have to do is to adopt percentage guidelines in two fields, local and informational, and then you would have this certainty.

Thank you. I will wait for later opportunity to develop some of these points.

Mr. WIRTH. Thank you very much, Mr. Geller. We appreciate your testimony.

Mr. Loevinger.

STATEMENT OF LEE LOEVINGER

Mr. LOEVINGER. Thank you, Mr. Chairman, both on behalf of myself and my client. I thank you for holding this hearing and for inviting us to appear.

Since the statements will become a part of the record I shall not attempt to give mine in any detail but, as you suggested, merely try to hit a few of the highlights.

From 1930 until 1969 there wasn't a substantial problem concerning the renewal of licenses. Both the FCC and the court of appeals, which is a sort of super FCC, adhered to the principle that a licensee who would perform meritoriously was entitled to renewal of his license.

In 1969, in a very peculiar decision by a three-man majority of a four-member quorum of the FCC, WHDH was in fact deprived of its license in what certainly most people consider a comparative hearing, even though Mr. Geller apparently does not. It was deprived of its license, and the license was awarded to another applicant who subsequently took it over.

This aroused considerable consternation in the broadcasting community, and the first response of Congress was that of Senator Pastore, who introdued in the 91st Congress a bill, S. 2004, very similar to H.R. 5752. Hearings were held in the Senate Communications Subcommittee. During the time hearings were being held, the Commission itself issued a policy statement adopting many of the provisions of this bill insofar as it could, and it was felt the need for legislation had passed. Therefore the matter was not pursued. However, a year later the court of appeals set aside the FCC policy statement, saying that under the statute the FCC was required to

hold a hearing whenever there was a second applicant, even on a renewal application.

Following this, there were bills to reform the license renewal procedure introduced in the 92d Congress and in the 93d Congress. In the 93d Congress, both Houses, by a very large majority approved H.R. 12992, which did undertake to reform the license renewal procedure in an appropriate manner. This, unfortunately, did not become law because the conference committee didn't meet on time before Congress adjourned, and so the bill died.

In 1979 the court of appeals again complicated and exacerbated the situation by reversing the FCC grant of a license renewal to WESH in Daytona Beach, Fla., because the renewal was based on the licensee's past broadcast performance, and because the FCC hadn't given enough weight to the fact that the licensee owned some interest in newspaper companies that published newspapers in Des Moines, Iowa, and New York City, although what relationship that had to Daytona Beach, Fla., was never explained.

In the 96th Congress this situation, among others, was addressed by bills introduced in both the Senate and the House, by both respective chairmen of the Communications Subcommittees. In that Congress, H.R. 6228, as you probably recollect, which would reverse the result of the *WESH* case, passed the House by a very large margin, but reached the Senate too late to secure a vote.

Without going into further details, it should be noted that the problem of license renewal has been before the Congress almost continuously for 13 years, has an extensive legislative history, numerous hearings have been held on the subject, hundreds of witnesses have been heard, hundreds of pages of testimony and statements have been received, and both houses of Congress on several occasions have voted by wide margins to reform the process.

In 1976 the FCC reported to the Congress that the comparative renewal process does not serve as a spur to licensees, because of the difficulty of evaluating actual performance against proposals. The Commission concluded that the comparative hearing process does not serve the public interest, is wasteful, and that a licensee that has served the public interest and complied with the Commission rules and regulations should be assured renewal, and that comparative hearings should be abolished.

Since the present renewal process is mandated by the statute, as interprted by the court, this requires action by Congress.

Now let me refer to only one other point covered in my statement, which was mentioned by the chairman in his introduction, and that is the concern about diversity and competition. The statistics of broadcasting alone are really pretty compelling on this. When the Radio Act was adopted, there were 583 broadcasting stations, all of which were AM radio stations.

As of the end of February 1982, there were nearly 5,000 AM radio stations, and a tctal of over 9,500 authorized radio stations, AM and FM. In addition, there were over 1,200 authorized TV stations plus over 4,800 television translators, which bring TV broadcasts to other communities.

However, beyond these impresisve numbers, there are recently developed electronic technologies which are providing competition and diversity beyond anything imaginable even a few years ago.

There is, of course, cable, which covers millions of homes with innumerable channels. Awaiting authorization by the FCC are thousands of low-powered television stations. Similarly direct broadcasting satellites await only FCC authority.

Subscription television awaits favorable FCC action. Multipoint distribution systems are in operation, and more are being constructed. Experimental systems of news and information transmittal by videotex and teletex have been in experimental operation and are going into commercial operation.

I don't have time to go into a further catalog, but let me say that my client heartly endorses H.R. 5752 because it reaches the one point with which we are basically concerned and which we think is essential to a stable, productive, and efficient broadcasting industry.

Thank you, Mr. Chairman.

Mr. WIRTH. Thank you very much.

[Mr. Loevinger's prepared statement follows:]

STATEMENT OF THE
NEWSPAPER-BROADCASTER COMMITTEE

Before the

HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS,
CONSUMER PROTECTION, & FINANCE

May 6, 1982

The Newspaper-Broadcaster Committee is an ad hoc group of broadcast licensees affiliated with daily newspapers, located in cities across the country. A list of active participants is attached. The sole objective of the Committee is to secure a remedy for the intolerable state of uncertainty in the law regarding renewal of broadcast licenses; and the Committee intends to disband when a remedy has been secured. The Committee supports the enactment of H. R. 5752 and urges expeditious action.

A brief review of the background of the present problem may illuminate some of the reasons for this position.

Federal licensing of broadcasting began with the Radio Act of 1927 and has continued to the present under the Communications Act of 1934. From 1930 until 1969 both the FCC and the U. S. Court of Appeals consistently held that a broadcast licensee which had rendered satisfactory service to its community should be entitled to renewal of its license in preference to any challenger or other applicant. In 1969 a three-member majority of a four-member quorum of the FCC held that a renewal applicant should be treated the same as a new applicant, and denied license renewal to Station WHDH (Boston) in order to give the license to a newcomer. A distinguished Harvard law professor commented in the Harvard Law Review: "In my opinion such a desperate and spasmodic lurch toward 'the left' as the decision in WHDH is neither just nor constructive." Nevertheless, this unprecedented

and eccentric decision was affirmed by the Court of Appeals.

In an effort to restore some degree of stability and common sense to broadcast licensing, Senator Pastore introduced S. 2004 in the 91st Congress in April 1969. The provisions of that bill were very similar to H. R. 5752. Hearings were held in the Senate but during Committee consideration the FCC issued a policy statement providing that a renewal applicant which had served the needs and interests of its area would be preferred over any new applicant. The need for Congressional action seemed eliminated and the Senate took no action. However, a year later the Court of Appeals set aside the FCC policy statement, holding that whenever there was a challenger to a license renewal the FCC was required to hold a comparative hearing.

Several bills to reform the license renewal process were introduced and considered in the 92nd Congress; and more than a dozen were introduced in the 93rd Congress. The 93rd Congress recognized the public interest need for such legislation, and both Houses approved versions of H. R. 12993 to set standards for broadcast license renewal proceedings and to create a presumption in favor of renewal for a broadcaster who responded to public needs. Although both Houses acted by large margins, a Conference Committee did not meet before the end of that Congress so the bill died.

In 1979 the Court of Appeals exacerbated the situation by reversing the FCC grant of a license renewal in a comparative hearing to station WESH (Daytona Beach, Florida) because the renewal was based on the licensee's past broadcast performance, and because the licensee had some ownership in geographically remote newspapers.

The situation was addressed in the 96th Congress by bills introduced to revise the Communications Act by Congressman Van Deerlin, Chairman of the House Communications Subcommittee, and by Senator Hollings, Chairman of the Senate Communications Subcommittee. Both bills had sponsors from both parties and other bills to reform the broadcast license renewal process were introduced by members of both parties, including Congressmen Swift and Collins. Although these bills varied in many respects they all provided for differentiating license renewal proceedings from initial applications and for renewal based on a licensee's performance. H. R. 6228, which would have reversed the WESH case, was introduced by Congressman Swift and passed the House by a large margin but reached the Senate too late to secure a vote.

In 1981, in the 97th Congress, S. 1629 was introduced by Senator Cannon, with Senators Packwood, Goldwater, Hollings and Schmitt as co-sponsors. The principal provisions of S. 1629 establish a broadcast license renewal procedure virtually identical to the provisions of H. R. 5752, although the language is somewhat different. In December, 1981, S. 1629 was favorably reported out by unanimous Committee vote and it was passed by the Senate on March 31, 1982.

In December 1981, Congressman Collins introduced H. R. 5242 which, among other things, provides for a reform of the broadcast license renewal procedure to establish stability in a manner similar to that of H. R. 5752. Early in 1982, Congressman Swift introduced H. R. 5752, which is one of the bills before the Subcommittee today.

Without going into further detail, it should be noted that the problem of broadcast license renewal has been before the Congress

for 13 years, that this matter has an extensive legislative history, that numerous hearings have been held on the subject, that hundreds of witnesses have been heard, that hundreds of pages of testimony and statements have been received and considered, and that both Houses of Congress have on several occasions voted by wide margins to reform the license renewal process.

Although the numerous bills that have addressed this subject have differed in many respects, they have all had one thing in common -- provisions to reform the impractical, inefficient and inequitable broadcast license renewal process now existing. As Senator Pastore said in 1969 in beginning hearings on S. 2004:

> Public service is neither encouraged nor promoted by placing a sword of Damocles over the heads of broadcasters at renewal time.

Similarly, in 1976 the FCC reported to the Congress that:

> The comparative renewal process, in our view, does not serve as a spur to licensees since it does not involve an evaluation of the applicants on equal grounds. Moreover, the regulatory intrusion into the licensee's programming decisions, which is inherent in the kind of detailed analysis required by the comparative process, is inconsistent with our professed belief in freedom of the press and free speech.
>
> * * * *
>
> The Commission has concluded that the comparative hearing process does not serve the public interest, involves a wasteful expenditure of resources on the part of the incumbent licensees, the competing applicants and the government and should be abolished. It is the Commission's position that a licensee that has served the public interest and complied with the Commission's Rules, Regulations, and policies should be assured renewal.

Since the present renewal process is mandated by the statute as interpreted by the Court of Appeals, its reform is beyond the power of the FCC and requires Congressional action. As the Senate Commerce Committee reported last December:

> The Commission's attempts to develop workable standards for comparative renewals has been complicated and obstructed -- rather than aided -- by the courts. The judicial pronouncements in this area have been inconsistent, confusing, and ambiguous.

The fundamental defects in the present procedure have been so thoroughly explored in prior Congressional hearings that it seems unnecessary to do more than mention the principal problems.

To begin with, as a practical matter it is impossible to make a fair comparison between the actual past performance of a licensee and the mere proposals of a challenger who seeks to displace it. Congress has recognized the difficulty of comparing program proposals by authorizing a lottery procedure to choose among qualified applicants for an initial license. To compare a record of actual performance with proposals devised to appear preferable has the practical effect of creating a kind of presumption against existing licensees. In addition, the courts require the Commission to consider matters extraneous to broadcast performance such as remote interests in other media.

This situation inevitably reduces the incentives to make the expenditures necessary for good programming, although many licensees make such expenditures out of a sense of public service. The situation offers incentives to speculators wealthy enough to afford the litigation costs of a comparative hearing in the hope of taking over the license of an established station which will enable them to make a quick profit. Conversely, this imposes on responsible

and meritorious broadcasters unnecessary and unjust burdens of cost, effort and worry simply to maintain their right to continue to serve their communities.

Perhaps more important, the comparative renewal process thrusts the FCC into the area of judging the merits of program content. This necessarily has a chilling effect on the freedom of broadcast journalism as well as on innovative programming.

The recurrent threat of change of ownership inherent in the present process makes collective bargaining and stable labor relations more difficult.

The present uncertainty as to the law governing license renewal is inconsistent with the expressed intent of Congress in earlier considerations of the Communications Act and with the principles established by both the FCC and the courts over a period of four decades prior to 1969 which were relied upon by many present licensees when they assumed the responsibility of becoming broadcasters.

These and other considerations make it clear that the kind of performance which the public interest standard requires from broadcasting can be fully achieved only when license renewal is based on broadcast performance and when meritorious performance assures license stability.

One concern mentioned in prior hearings involves diversity and competition in this field. The statistics of broadcasting alone seem adequate to insure this. In 1934 when the Communications Act

was adopted there were only 583 broadcasting stations, all of which were AM radio stations. As of the end of February 1982 there were nearly 5,000 authorized AM radio stations and a total of over 9,500 authorized AM and FM radio stations. In addition, there were over 1,200 authorized TV stations plus over 4,800 television translators which bring TV broadcasts to otherwise inaccessible communities. Even beyond these impressive numbers, recently developed electronic technologies provide a guarantee of further competition and diversity beyond anything imaginable a few years ago. A number are already operational, awaiting only FCC permission to begin operation. There is, of course, cable which is connected to millions of households and brings an almost unlimited number of channels to each household. Awaiting authorization by the FCC are thousands of low power television stations. Similarly, direct broadcast satellites have been promised as soon as authority is granted and a number of households already have the special antenna which enable them to receive satellite broadcasts directly from among the numerous television programs now being carried by satellite. Subscription television awaits favorable FCC action. Multi-point distribution systems are in operation and more are being constructed. Experimental systems of news and information transmission by videotex and teletex have been made and commercial operation looms in the near future. Other technologies are in various stages of development and it is impossible to present a complete catalogue of actual and potential competitive sources for broadcasting.

The importance of broadcasting as well as other electronic means of communication, is indicated by the number of bills relating to this subject now pending in Congress and the consideration which Congress has given to them. Broadcast license renewal is only a single aspect of electronic communications. However, the reform of the broadcast license renewal process to provide stability in the manner proposed by H. R. 5752 is fundamental and essential. The bill does not preclude any of the other legislative proposals related to the general field of electronic communications but provides a sound foundation on which a stable and responsible broadcasting industry can serve the public interest.

NEWSPAPER-BROADCASTER COMMITTEE
May 1982

Bonneville International Corporation
Salt Lake City, Utah

Chronicle Publishing Co. and
Chronicle Broadcasting Co.
San Francisco, California

Cox Broadcasting Corp.
Atlanta, Georgia

The Dallas Morning News (A. H. Belo Corp.)
Dallas, Texas

Dispatch Printing Co. &
WBNS-TV, Inc.
Columbus, Ohio

Evening News Association (WWJ, etc.)
Detroit, Michigan

Field Communications Corp.
San Francisco, California

Forum Publishing Co. & WDAY, Inc.
Fargo, North Dakota

The Hearst Corporation
New York, New York

The Houston Post (KPRC & TV, etc.)
Houston, Texas

The Journal Company & WTMJ, Inc.
Milwaukee, Wisconsin

Landmark Communications, Inc.
Norfolk, Virginia

Louisiana Television Broadcasting
Corp. and Capital City Press
Baton Rouge, Louisiana

Multimedia, Inc.
Greenville, South Carolina

Newhouse Broadcasting Corporation
Syracuse, New York

Paducah Newspapers, Inc.
Paducah, Kentucky

Scripps-Howard Broadcasting Co.
Cleveland, Ohio

The Standard Corporation & KUTV
Salt Lake City, Utah

The Times-Mirror Co.
Los Angeles, California

Mr. WIRTH. Mr. Mater.

STATEMENT OF GENE P. MATER

Mr. MATER. I welcome the opportunity to discuss the CBS position on several bills before this subcommittee and address the policies and procedures governing FCC consideration of applications for renewal of broadcast licenses.

CBS strongly endorses license renewal reform legislation such as that being considered here today. These changes—particularly those affecting competing applications and petitions to deny renewal of licenses—are long overdue and in the public interest. CBS also strongly supports other deregulatory provisions in the legislation, including proposals to lift constraints imposed on the journalistic functions of all broadcasters.

At present, the petition to deny process is unnecessarily onerous and time consuming, for the broadcaster and for the FCC. Further, the petition to deny concept has been abused. The procedure contemplated by H.R. 5242 would make the system more efficient, would reduce regulatory paperwork and would expeditiously resolve frivolous allegations. Finally, the public's right to file petitions would not be disturbed.

Turning to competing applications, today when a challenger seeks to displace a broadcast licensee, there need be no contention that the incumbent has been deficient in any respect. The mere filing of a competing application is normally sufficient to trigger a comparative proceeding that can—and generally does—go on for many years.

In such a proceeding, the past program record of the incumbent may not be the decisional factor. Thus, even if the licensee has operated in the public interest, there is no assurance of renewal. And, even if the renewal applicant ultimately prevails, the process would have involved years of litigation, enormous disruption of management, and staff time, and vast sums in legal fees—none of which adds one iota to the service the public should receive from broadcasters.

In particular, H.R. 5752 succinctly addresses and resolves this longstanding and basic threat to broadcast stability, stability that is of increasing importance if broadcasters are to compete effectively to serve the public in today's marketplace.

There are those who contend that the license renewal challenge is needed as a competitive spur to assure service to the public. While that position might possibly have been relevant in the distant past, the real competitive spur to the broadcaster today is the marketplace competition from increasingly diverse program sources.

Notwithstanding our support for these proposals for reform of the license renewal process, we would be remiss in not now stating our strong objection to that part of H.R. 4726 which seeks to quantify program standards for broadcasters. Quantitative program standards have inherent deficiencies, the most important of which is that they exceed the outer limits of Government control over the broadcast press.

CBS strongly believes that under the first amendment there is no justification for the Government to be involved either in setting the program schedule for broadcasters or deciding which programs are worthier than others.

CBS has long argued that Government involvement in broadcast journalism is antithetical to first amendment principles. Therefore, we support wholeheartedly the provisions of H.R. 5585, for example, which repeal the equal time and fairness doctrine provisions of the Communications Act. There can be no doubt that these provisions would be unconstitutional if applied to the print media.

Finally, we also urge action on proposals such as those in H.R. 4781 that would preclude the FCC from requiring such bureaucratic burdens as ascertainment and program logkeeping and from overseeing such content-related matters as program formats and commercial announcements.

These areas of agency activity are unneeded intrusions into responsibilities that should be left to the broadcaster. The viewer and listener will know soon enough whether the broadcast station has a sense of audience needs and interests, whether the format is attractive and informative, whether too many commercials are being broadcast. If the public knows, the broadcaster will ignore that knowledge at his peril. Government is simply no help—and should have no part—in this interaction between audience and broadcaster.

CBS applauds the members of this subcommittee for submitting and considering these bills. By assuring a reasonable expectation of license renewal and by freeing broadcasters of unnecessary regulations, broadcasters will be placed in a stronger position to serve the American public.

Thank you.

Mr. WIRTH. Thank you, Mr. Mater.

Mr. Schwartzman.

STATEMENT OF ANDREW JAY SCHWARTZMAN

Mr. SCHWARTZMAN. Thank you, Mr. Chairman. I appreciate your invitation to testify.

Perhaps you have a sense of déjà vu, listening to broadcasters condemn the current law, and listening to me defend it.

But even so, you and I are relative newcomers to this debate. In 1970, I was in law school, reading about how the courts had ruled—several times—in favor of both listeners and new applicants, and against the FCC and incumbent licensees. The cases held that the Communications Act of 1934 placed primary emphasis on providing public service.

In 1970, according to your official biography, you were finishing a tour of duty at HEW.

But while we were elsewhere, many of the same broadcasters and lobbyists in the room today were up here on Capitol Hill, predicting the imminent demise of their livelihoods and seeking congressional protection.

They're still here, saying much the same thing. Over the last decade, this subcommittee and its predecessors have held hearing after hearing to consider the industry's plea for "renewal stabil-

ity." Save for Congressman Swift's conscientious, sincere, ingenious and, I fear, utterly unworkable point system, the bills before you today are lineal descendants of the "Pastore bill"——

Mr. WIRTH. If the gentleman would yield, do you want to respond? Your name has been mentioned.

Mr. SWIFT. I just want to note that may be the only thing on which Mr. Schwartzman and Mr. Mater may agree.

Mr. SCHWARTZMAN [continuing]. S. 2004, considered, but not enacted, by the 91st Congress.

Freedom from challenge is an idea whose time never came. These bills are old wine in old bottles, and they still leave a bitter taste.

But while the proposals have not changed, a few other things are different:

First, disaster has not befallen the industry. It has prospered and grown. A tiny fraction of broadcast licensees have ever faced, much less lost, renewal challenges.

Second, the best broadcasting system in the world has become better, not in spite of, but because of, the provisions these bills seek to alter or repeal. Over the last decade, the quality, quantity, and responsiveness of radio and television news and informational programing has improved almost beyond measure.

While there is a long way to go, entertainment programing now conveys a more complete, socially responsible portrayal of the racial and ethnic diversity of our Nation, of its working people, its older people—and its dissidents, whose unpopular views of yesterday have become the prevailing philosophy of today. On behalf of my organization, I am proud to claim part of the credit for these changes. Ours is a system which provides access for some, and due process for all, and we have utilized the license renewal process to promote peaceful, lawful change.

Third, as this committee well knows, the broadcasting industry has already received much more than half of what it has sought. Last year's expansion of license terms by 67 percent for television and 33 percent for radio should go a long way to mitigating complaints about the expense and risk of the license renewal process. It is simply too soon for this subcommittee to consider further amendments.

Mr. Chairman, under your leadership, and with the expertise of what is surely one of the very finest staffs in Congress, this subcommittee has passed extraordinary common-carrier legislation.

The bipartisan approach which resulted in unanimous passage of H.R. 5121 is something of which you should be justly proud, for you have constructed a system which will promote free competition. It insures service to all segments of the public, restricts monopolistic predatory conduct, and spurs innovation through open entry.

Mr. WIRTH. I did not write that in.

Mr. SCHWARTZMAN. The prohibition of comparative hearings under consideration today would do exactly the opposite, reducing service, perpetuating monopoly, and prohibiting new market entrants.

Perhaps the most cynical component of this legislation is the effort to restrict the first amendment rights of civil liberties, civil rights, consumer, and other groups seeking to challenge licenses of

those broadcasters who discriminate, who place personal interests ahead of the public's needs, and who abuse the public trusteeship afforded them without cost.

Let's not get confused—the right to petition to deny renewal is rarely exercised. There are almost 10,000 broadcast licensees, but in fiscal year 1981, the FCC received 57 petitions to deny. Instead, relying on their right to challenge renewal, organized community groups have been able to engage in dialog with broadcasters whose service may have been insensitive or deficient.

The settlements which have become commonplace in this process substitute private negotiation for Government action, and have actually led to less, not more, intrusion into the lives of broadcasters. This process did not happen 20 years ago, and it will not happen in the future if petitions to deny are restricted.

Mr. Chairman, your letter of invitation referred to these bills as "broadcast reform proposals." I respectfully differ. "Reform" refers to the improvement of something which is wrong. The basic system of the Communications Act is fundamentally sound. These bills reform nothing; they destroy elements of a system which benefits the public, the industry and the marketplace.

Mr. WIRTH. Thank you very much, Mr. Schwartzman.

Our final witness is Mr. Douglas Stephens from Denver, whose all-news station KDEN serves a major public-interest need in Denver. Mr. Stephens also is chairman of the Colorado Association of Broadcasters, who has, I suppose the unenviable task of interpreting to the NAB the concerns, thought processes, and thinking of the chairman of the subcommittee.

Mr. Stephens, thank you very much for coming aross the country and joining us today at this time as a member of the board of the NAB.

STATEMENT OF DOUGLAS C. STEPHENS

Mr. STEPHENS. As a broadcaster first, thank you, Mr. Chairman. I have tried to interpret some of those ideas. I have learned an awful lot and I suspect you would say I have a long way to go.

Mr. Schwartzman referred to old wine in old bottles, perhaps of great vintage. The day somebody says you don't have access to broadcast stations to make the pitch which I don't necessarily agree, you have my card and you may make the pitch any time you want to.

Mr. Chairman, you said that the focus of this first hearing will be on the license renewal process, that Romanesque ritual through which licensees await a thumbs up or thumbs down verdict from a Government agency as to whether or not they may continue broadcasting to the public. Over the years, a variety of standards, procedures, and guidelines have been erected in an attempt to quality and quantify a broadcaster's programing performance to determine whether or not that broadcaster should be allowed to continue in business.

I would urge you not to adopt any renewal standard which would invite or permit the FCC to establish rigid detailed guidelines or procedures.

We agree, Mr. Schwartzman.

Whatever laudable goal this process may set out to accomplish, until the recent deregulation declaration by the Federal Communications Commission, the process itself had become counterproductive. For example, the preparation of the license renewal forms with attendant exhibits, support documents, records maintenance, et cetera, took several hundred hours among different individuals to prepare, to say nothing of legal costs for review.

I do not have the luxury to maintain people or staff whose sole or even primary responsibility is to shuffle paper. While this must be done, it comes at the direct expense of being able to provide more or better services to our listeners, our constituents.

A case in point—Mr. Chairman, I think you may agree with this—the formal ascertainment process, as a part of the license renewal process. The FCC determined some years ago that community leaders, as well as members of the general public, should be formally surveyed to determine their needs, wants, and aspirations along with broadcasters' reponse as to how we intended to program to meet those wants, needs, and aspirations.

While reponding to the need and desires of our listeners and communities is something we must do every day to survive, we dutifully responded to the roll of the drum and began the formalized ritual known as "Community Ascertainment." In the Denver metropolitan area, this involves approximately 40 radio and television stations. When the various mayors, police chief, and the like, began to hear the same technically phrased questions over and over again, in fact times 40, they collectively cried, "Enough"! We heard such comments as: "We talk with you people all the time anyway. If you don't know what's going on out there you're in bad shape." To which we responded that we understood, but would greatly appreciate their help in doing this exercise for the Government. The net result was a formalized series of interviews attended by broadcasters en masse, with forms in hand, while people identified as community leaders were paraded into the hall for a few minutes, had a statement read to them, a question put to them, thanked, and ushered out while someone else was ushered in, and the process repeated. Needless to say, someone must have wondered at the glaze over the eyes of those in the audience.

I believe this is a classic example of bureaucratic overkill. Small market or large, we must serve the wants and needs of our communities or we will soon be out of business. To engage in a time-wasting, largely meaningless cattle show as I have described represents a triumph of form over substance and is the type of regulation run amok that serves nobody well. Renewal should not be premised on adherence to this type of mechanistic ritual.

Renewal should not in part be dependent on compliance with a governmentally imposed commercial standard. I believe it inappropriate for the Government to be in the business of setting commercial limitations, either minimum or maximum, not that the intent may be wrong, but that it is an inappropriate activity for the Government of the United States. Listeners will be the ultimate arbiter of a station's commercial activity, and believe me, we pay attention to that kind of judgment. That is where it should be.

I believe retention of broadcast logs for purposes of showing compliance with arbitrary percentages and guidelines serves no useful

purpose. The information contained in the logs does not really relate to content and serves only to blur matter of program percentages, an issue which itself should be discarded as essentially useless.

We think that is an inappropriate response by Government and perhaps should not even be under their jurisdiction. Parenthetically, my accountant tells me to keep the logs anyway, IRS may need a trail.

What is the literal definition of news, public affairs, and the like? Should the U.S. Government be in the business of defining these matters and providing a penalty under law for failure to program more or less of these categories? I would hope not.

Finally, all of the proposed bills address the matter of comparative hearings in a manner I believe to be responsible and have my support as a broadcaster very concerned about the promise versus performance standard. Realistically speaking, if KDEN did not serve the public responsibly, I would not remain a broadcaster. All broadcasters operate in a competitive marketplace. If they do not provide programing responsive to their listeners' needs and interests, they will not succeed. Broadcasters know that the programing they provide always is but one of an increasing number of alternative program sources among which consumers may choose.

I have enjoyed discussing these matters with you. I recall David Leach when he was in the broadcast area, and Tom Rogers sitting by you. I have listened closely to those who discuss the relationship of Government regulation vis-a-vis spectrum scarcity. I understand and respect the argument in theory, but in practice it would seem there are few things less scarce than radio stations. While a broadcaster may be a single licensee or one of only a few in a market, you would almost have to be on the Moon to escape a variety of radio signals into any community in this country.

I have been out in the middle of a desert. I can testify to that.

I would hope, therefore, that consideration of deregulation legislation, perhaps simply a codification of the previous work done by the FCC, with improvements, would not deprive some areas of the legislative benefits.

You have recently spoken of consensus. It is my hope and desire that a consensus for legislation that will not only provide relief for broadcasters but, more importantly, will provide better programing service for this country will indeed become law.

Earlier you referred to a possible alternative method for determining a public broadcast standard. Perhaps that standard should be the public itself. I believe it was Thomas Jefferson who bore the best of both parties as a Democrat and Republican, said "trust the people." I believe that a worthwhile approach and recommend it. Thank you very much.

Mr. WIRTH. Thank you very much, Mr. Stephens. I am going to ask each of the members of the panel to react in any way they want to other statements made before we get into questions and answers, but before doing so, Mr. Swift had a comment that he wanted to make.

Mr. SWIFT. Thank you, Mr. Chairman.

In lieu of an opening statement, there was an additional member of the panel that I had hoped would be here. Due to a very serious

medical situation he was unable to be here, but I wanted to bring to the committee's attention the material that he might have been able to provide.

The gentleman by the name of Jim Lynagh is now president of Multimedia, formerly with Post-Newsweek's Miami Station WPLG, which was challenged on two occasions, once in 1969 and once in 1972. He could have told us in considerable detail about the cost of defending against a challenger. WPLG was forced to hire one person full time to defend, and many other station personnel devoted considerable time to the projects. At the end, the FCC concluded that the station in fact had a long history of exceptional service to its community. Competing applicants just didn't measure up.

Mr. Lynagh could have given us a typical inside story of defending a challenge. History, however, has an additional note of a political motive that can be behind at least one of the licensed challengers, and I think here we normally think of the challenges as coming either from an entrepreneur that is just going to take a run at somebody's license, or sometimes public interest groups who are either quite legitimately trying to get a station to behave in a different fashion, or sometimes are merely small groups motivated out of ego need or what have you. But I think we overlook the potential for mischief in using the present comparative renewal process for political purposes.

I would call your attention to the transcript of the White House tapes in which President Nixon, who at that time was having considerable difficulty with the Washington Post, said, "The main thing is the Post is going to have damnable, damnable problems out of this one. They have a television station and they are going to have to get it renewed."

Haldeman said, "They have got a radio station."

The President said, "Does that come up too? It is going to be goddamn active here. Well, the game just has to be played awfully rough."

I do not raise that because I happen to believe that that kind of total abuse of power is restricted to either party or any philosophy. I think it is a potential regardless of who might be the elected official.

It is just simply another example of how this particular process can be abused by Government officials, and I would like to ask unanimous consent that Joel Chaseman, who is the current Post-Newsweek station president, could offer a written statement to the subcommittee that would bring to the attention of the committee more detailed information with regard to this aspect of the issue we are dealing with today. [See p. 106 .]

Mr. WIRTH. Without objection, his statement will be included in the record after the statements of our witnesses today.

Before getting into questions and answers, let me ask if any of you would like to comment on what other panelists may have said.

Mr. Mater.

Mr. MATER. If I might add to what Mr. Swift just talked about with regard to firsthand experience on comparative renewals. It was, to the best of our knowledge, a nonpolitical one, but in 1972 a competing application was filed against the renewal of the CBS-owned television station in Philadelphia, and it was and is a sta-

tion that has been serving this community in an outstanding manner.

However, the proceeding lasted more than 3½ years. It involved 77 witnesses, 90 days of hearings before an FCC Administrative Law Judge, and more than 25,000 hours of outside counsel's time.

We ultimately prevailed, and we still have the station.

I raise this not simply because it is our own experience, but referring to something that was said earlier, I question whether the smaller broadcaster could sustain such a proceeding.

Mr. WIRTH. Mr. Stephens.

Mr. STEPHENS. Mr. Chairman, as you may be aware, as I recall it was in 1976 a blanket petition to deny was filed against all Colorado broadcasters. I believe that is correct. If not 95 percent. By the way, none was granted, but it was perhaps an example of a frivolous situation, a petition to deny against all broadcasters, and every one of them was granted, but you had to walk through this process of what would appear to have been a frivolous petition to deny against all stations.

Mr. WIRTH. Mr. Schwartzman.

Mr. SCHWARTZMAN. A lot of the problems that have been discussed here are not going to be remedied by this legislation. Ascertainment is not required by this legislation, and will not be abolished by its passing. Similarly, while I sympathize with Mr. Fritts' labor/management problems, I am not aware that the cost of labor/management difficulties is properly part of the discussion today.

With respect to quantitative standards, I am afraid I am going to confuse the discussion even further. I don't really agree with Mr. Mater. I don't have anything against quantitative standards per se, and indeed, I have supported a number of Mr. Geller's proposals over the years to try to develop some quantitative standards which I think would provide a considerable measure of relief from anxiety on the part of the broadcasting industry.

I speak very respectfully, Congressman Swift, when I say that you have made a very, very conscientious effort to deal with a problem that you perceived of trying to divorce the program content issue from the quantitative standard issue.

I just happen to think it doesn't work, and I think that there is nothing wrong under the first amendment, with dealing in a content neutral manner with quantitative program standards. So I come up somewhere closer to Henry Geller really than I do to Gene Mater.

With respect to the issue of logs, again there are some things that don't really belong in this discussion. As Mr. Stephens has said, program logs are and will be maintained regardless of anything that the FCC does. You need them for advertisers.

I remember well the incidents in 1972, and I also note that the Office of Telecommunications Policy under Mr. Whitehead proposed legislation that was even more sweeping in favor of broadcasters' needs than the ones that are being considered today. We operate under a system of laws, and the system of laws dealt very well with the competing applications that were mentioned that came out of that 1972 experience.

The fact is that out of that experience, as I recall, there developed some procedural reforms, such as the summary judgment process. This was used, I think, for the first time in the *WPLG* case. It significantly speeded things along, and that leads me to my final point:

I know it is not fashionable to propose additional regulations these days, but I have one form of regulation which, if enacted, would eliminate a lot of complaints about other regulations. I would regulate the lawyers.

I think if we put a cap on legal fees, and a cap on the number of lawyers allowed to work on a particular matter, a lot of the complaints would go away. The fact is that this is an over-lawyered process.

Mr. SWIFT. Now I think you are agreeing with Jim Collins.

Mr. SCHWARTZMAN. As an attorney, and I note that this subcommittee has relatively few attorneys, at least in proportion to——

Mr. WIRTH. I was just going to ask if you would put a cap on the number of lawyers allowed in the U.S. Congress.

Mr. Swift and I have thought about it.

Mr. SCHWARTZMAN. I think it does make a difference and I think it is reflected in many of the things this subcommittee does.

Mr. Collins, for example, has suggested some procedural changes in the way the FCC administers these hearings, and I support those changes. We don't need traditional adjudicatory hearings with scores of lawyers on each side getting up and examining witnesses.

A lot of this can be done on paper, with affidavits. We can eliminate the FCC's Review Board or, alternatively, we can delegate a lot of these cases from the FCC to the Review Board.

Much of the cost is cost that is created by lawyers who then tell their clients that it is necessary for them to have them lobby to change the system.

That increases the cost and I think if we streamline the process a lot of the complaints that have been unfairly directed at the Communications Act would disappear.

Mr. WIRTH. Mr. Geller.

Mr. GELLER. Our discussion has been in terms not of getting rid of the public trustee notion and substituting a new system, but the comparative renewal, so I will limit my comments now to that even though I believe strongly that my preference would be to substitute a whole new system.

If you are going to keep the public trustee system, programing is its essence of service to the public, and the statute even says what programing. It says local in 307(b) and it says informational programing in 3515(a), so the broadcasters, when they come up for renewal, are going to be judged on programing and on whether they have rendered meritorious or minimal service in these areas of local and informational. They seem to want a conspiracy of not knowing what it is called for in these areas. Their position is: Just give us a renewal; some way or other give us a renewal, but we don't want any objectivity, any guidelines, You figure out, FCC, how to give us a renewal. That doesn't make any sense in this first amendment area. If you are going to keep the trustee notion, you are driven to somehow having some objecting standards.

The second thing I would like to say is that while I am dumping very much on the comparative renewal, I think it has been a failure because the agency has failed in this area.

Nevertheless, its purpose wasn't bad. It was to spur meritorious service against minimal service.

None of the broadcast spokesmen here seem to mind that disappearing.

I can understand that, but it seems to me that you, as legislators, ought to mind it. Therefore, if you keep the public trustee notion, you ought to require meritorious service, and you ought to require objectivity.

When I was here on December 9, I gave you a draft statute. I would be glad to either refer to that, and respectfully request that you take it into account in these hearings, Mr. Chairman, or give you another copy of it.

That draft statute says that if you get rid of the comparative renewal, here is an objective way to proceed that will serve the public interest.

Thank you.

Mr. WIRTH. That is part of the record of the hearings, Mr. Geller, and I wanted to come back and talk a little bit about that if we might. Are there other comments?

Mr. LOEVINGER. Mr. Chairman, it isn't possible to answer all the points that have been raised, but specifically, for example, as to whether or not labor/management relations are irrelevant, let me say that it is virtually impossible to have very stable labor/management relations and collective bargaining in a situation in which ownership is threatened to be changed every 3 years.

Whether it is actually changed or not, a prudent owner can hardly enter into a long-term contract or bargain over a long term, and indeed labor itself is handicapped.

In fact, in earlier and more extensive hearings on the license renewal process, the broadcast unions appeared in support of the kind of reform legislation that we are urging upon this subcommittee today for this very reason.

Mr. Schwartzman made what I take to be the not altogether facetious suggestion that perhaps you ought to regulate the lawyers.

Let me say that the most effective way to minimize the role of lawyers and their burden upon broadcasting and broadcasters and the whole regulatory process would be the adoption of H.R. 5752, which would substantially eliminate the comparative hearing process.

This is where the lawyers get in and I may say they do prosper and I may say I am one of those who is probably a beneficiary of the system and yet I tell you I don't believe it serves a social purpose and I do think it should be eliminated in a manner proposed by the bill.

Mr. WIRTH. Mr. Fritts, everybody else has commented. Do you have a comment you wanted to make?

Mr. FRITTS. I didn't know that the labor/management was going to become a part of this hearing other than the fact I was trying to compare the cost of hiring outside legal firms to defend oneself in a hearing, and I equate that quite handily to what might take place

as far as fees are concerned and the impact of those fees on a small market broadcaster, and the burden that is imposed therein.

Mr. WIRTH. Mr. Stephens.

Mr. STEPHENS. With respect to so-called objective standards, I think Mr. Swift, I think, can appreciate some of this—not necessarily your personal experience, but example, Mr. Chairman.

In the Denver metro area, and I think it is not uncommon in other areas, to give you a couple of for-instances on percentages of public affairs programing, percentages of news that used to be the so-called raised eyebrow guideline at the Commission.

At one station in an effort to reach a youth market, in the days when those percentages were there, you had three to four newscasts during what might be termed the 5 a.m. to midnight hours, but from midnight to 5 o'clock you might have a 20-minute newscast on the hour, and this was solely for the purpose of achieving a certain guideline.

Another station happened to program what is called wall-to-wall music of a certain soft variety. Now, on a certain evening they might announce that the next hour of whatever it is they do, that they always do, will be brought to you on behalf of a certain institution, and that qualifies as an hour-long worth of public affairs programing.

I think it is that kind of guideline, when we get into trouble. What is news? What is the definition of news?

It is going to be different with Mr. Schwartzman, I suspect.

What is the definition of entertainment and news as they cross? I think this is the kind of swamp that I would urge this subcommittee to help stay away from and help get legislation out of that area.

Thank you.

Mr. SWIFT. Mr. Chairman.

Mr. WIRTH. Mr. Swift.

Mr. SWIFT. I would like to proceed out of order for just a moment. We are really not having a hearing on that particular bill today, H.R. 4726. I would just like to state for the record that I have yet to talk to a broadcaster who understood the bill, though they are all absolutely certain it won't work. My bill would specifically avoid the kinds of things that you are concerned about.

Mr. STEPHENS. I wasn't referring to that bill.

Mr. SWIFT. I understand that and for that matter I don't know of anybody in the public service area that understands the bill either, with the exception of Henry Geller, who agrees—amazingly—with some portion of it.

I suspect that when we do get some time to sit and go through that with considerable detail that maybe I will be seen as somewhat less wrong than I am seen now. I didn't say right. I didn't want a whole lot of rebuttal, but less wrong.

Mr. MATER. You don't want a response.

Mr. SWIFT. If you would like. Have you read the bill?

Mr. MATER. Of course I have.

Mr. SWIFT. Do you understand the bill? You didn't when we had lunch last time.

Mr. MATER. Mr. Swift, I think you underestimate what I have done.

Mr. WIRTH. You underestimate CBS.

Mr. MATER. Not the whole company, just me. I think I do understand the bill.

Mr. SWIFT. My point and then I think we really shouldn't get these hearings bogged down because they are not after that bill, but the only point I wanted not to let all of that stay on the record without some response is that I do find now, as I sit down and take some time with people in the programing sections of broadcasting stations, that I begin to get an "Oh, that is how it works" kind of reaction, and they find that what they originally saw was complexity in fact is flexibility, and that simpler forms will in fact tie the broadcaster's hands unnecessarily and lead them to some very arbitrary standards.

The purpose of that bill was worked out very carefully so as to give the broadcaster absolute flexibility once you have established the standard, and at some future date I would like to go into that in great detail, but I don't believe that was the purpose of the hearing today.

Mr. WIRTH. I think it is relevant if I might just pick up on that.

It seems to me that these are two themes underlying this discussion and the legislation H.R. 4726, which I would like your reaction to.

First of all, to the extent that there is to be some thorough regulatory reform that seeks to create a relatively automatic license renewal process, there must be some alternative means of assuring the public interest.

These are public airwaves, and if you are going to have the license renewed relatively automatically, where is that public interest to be assured? Should there be a fallback position in the case of a market like Denver, which has grown from 5 radio stations to 40 over-the-air broadcasting outlets—quite an explosion—but what if things were to change? Is there a fallback position where that competitive marketplace would provide for the public interest?

It seems to me that that question follows the assumption.

Second, if we are going to work to reform the license renewal process, and I think any objective individual looking at it would say that it is an awkward process, then we ought to find some fashion, and Mr. Swift has taken a cut at this, to make the renewal standard more meaningful, to objectify in some way that which is an obligation. We should not go from one amorphous standard to another.

A I said in my opening statement, and as I read these other pieces of legislation, the proposed new standards are just as amorphous as the current standard. How do you get something more tangible, if in fact you believe that there ought to be some kind of a protection of the public interest?

Mr. Geller.

Mr. GELLER. One thing that I think you have to make a distinction here is between radio and television. In radio with 9,000 stations, with 59 in Chicago, 39 here, I would urge very strongly that the way to deal with Mr. Stephens' point is to let go, but to recognize, as you said, that you do need an alternative.

Mr. Stephens' station is not going to supply educational programing for children or any of the other things I mentioned.

Mr. WIRTH. Let's leave this to radio. I agree with you. We tried to make that distinction as you know, in the competition report.

Mr. GELLER. Yes, and you did very well.

Mr. WIRTH. We say in the radio broadcast area there is very, very significant competition, the Denver market or the Chicago market or most big city markets, as opposed to the potential for competitive entry in the video market. We should stay with the radio issue for the moment.

Go ahead.

Mr. GELLER. In the radio field I think that rather than try to quantify service, you really ought to let go. I agree with Mr. Stephens' criticism, that you don't want to take a good music station which is putting out beautiful sound, and force it to put on some talk program to meet the FCC's requirements.

Mr. WIRTH. Unless it is a congressional talk program.

Mr. GELLER. At 6 a.m. or 3 a.m., but I agree with what you said at the opening of these hearings, and that is, that you ought to recognize there still is a public interest here. The commercial radio system will not supply a great deal of programing that is needed in the public interest.

If you let go but take a small spectrum or usage fee, and use that money for public radio, which is in need of money, wants to deliver this type of programing, you will now have rationalized the system.

I am talking about the money going into the general treasury, not a dedicated tax, and Congress then deciding periodically how it wants to use it.

I think if we are just limiting it to radio that that is certainly worth trying and seeing what the results are. You would free radio of the first amendment strains. Radio broadcasters would no longer have to meet these public interest criteria. They would be free to perform exactly as they wanted to in the marketplace, but in turn there would be a support system for someone else who wanted to deliver educational programing or gavel-to-gavel coverage of the Panama Canal debate or something of that nature.

Mr. MATER. I do understand your bill, Mr. Swift. I wrote you a long letter about it. But the whole concept of quantification of a public interest standard, and particularly the way you have done it, we find, as I think I said in our prepared statement, totally antithetical to what this is all about in terms of first amendment guarantees.

To have the FCC sit in judgment, deciding what is appropriate in terms of what belongs on the air, which rates x points and which program rates y points, to have somebody in Washington decide for the entire Nation that certain programs are worthier than others and deserving of more points than others——

Mr. WIRTH. At the risk of being impatient, it is very nice for everybody to sit and take shots at the current process or somebody's proposal, right?

It seems to me that it is more appropriate to say we believe that there is a public interest, and that is the purpose of the license renewal process. Yes, Virginia, there is a Santa Claus.

Yes, citizen, there is a public interest. Those are your airwaves, and we want to assure that your interest is protected.

How do you go about doing it, rather than beating up on the current process or H.R. 4726 or whatever there is? What are you offering as an alternative rather than an amorphous standard which says that if you don't disobey the law, or have egregious violations of the law—you can go 70 miles an hour, but you can't go 75, and the law says 55, you therefore get your license renewed?

That doesn't seem to me to be a particularly constructive approach to what we ought to be doing.

Mr. MATER. First we are never going to resolve our basic philosophical difference. I look at the first 10 amendments as being a bill of rights and you look upon them as being a bill of privileges!

Mr. WIRTH. I didn't say that.

Mr. MATER. But you are suggesting it.

Mr. WIRTH. I did not in any way, shape or form, Mr. Mater, say that I thought the first amendment was a bill of privileges.

That is absolute nonsense. There has been nobody on this committee that has more carefully defended throughout the process the first amendment against the abuses brought by some who would suggest various programing content restrictions or monopoly control over program content and conduits. And what is in the telecommunications bill is an excellent example of this.

I really think that was an untoward comment and absolutely not the case.

Mr. MATER. What I am suggesting is, we are discussing what amounts to a tradeoff.

Mr. WIRTH. Do you want to clarify what you are talking about? I would appreciate that.

Mr. MATER. Surely.

You are saying now, in other words, how do we measure this public interest?

First of all, the bill, as proposed by Mr. Swift—I am talking about the shorter bill, the comparative renewal bill—indeed still contains the public interest standard.

I mean that it is there, so we haven't lost that.

In terms of how do you measure it, I think you measure it simply by service to the audience, without trying to quantify it, and that is what I was getting at. To say that in order to decide whether a station has or has not met this public interest standard, has it put on *x* of one program and *y* of another. We look upon service measured as substantially responsive to the desires, the problems, the needs, the interests of the licensee's service area.

Mr. WIRTH. I recommend, Mr. Mater, that you read the Federalist Papers. If you look at the Federalist Papers, an underlying purpose and rationale was to assure that the American public had access to a diversity of ideas. This has been confirmed by the courts over and over again. It is not up to any entity, whether it is the Government or CBS, or A.T. & T., to arrogate to themselves what information is going to go to the American public.

That is what the Federalist Papers are all about and that is what the first amendment is all about.

Mr. MATER. Oh, I agree.

Mr. WIRTH. Fine.

Mr. MATER. I agree.

Mr. WIRTH. Mr. Swift.

Mr. SWIFT. I just wanted to state it seems to me that we have a dilemma here. On the one hand you state very articulately the concern about the FCC being the entity that would establish the quantifiable standard.

On the other hand, it seems to me that you are then saying that you are happy with them making a totally subjective judgment on what meets the public interest standard, which to me seems infinitely more dangerous than a stated quantification standard.

Do I see a dilemma that doesn't exist?

Mr. GELLER. No.

Mr. WIRTH. It seems you must logically therefore eliminate the public interest standard, which is in fact CBS's position.

Mr. MATER. No, no, what I am suggesting, I don't think that is completely accurate.

In other words, if a station performs and serves the public, presumably the FCC, for example, would not have received complaints.

Let's use that as one example. I think in a way it is acceptable. You are talking about the audience deciding whether the station is doing the right thing.

Mr. WIRTH. Forgive me. I was trying to listen to two things at one time, and I was unsuccessful. Could you repeat your last two sentences?

Mr. MATER. In other words, absent complaints to the Commission about the service of any station, why not presume that indeed that station has been serving this community? Going a little further, if it isn't serving the community, it isn't going to last very long as a business entity.

Mr. GELLER. Could I raise a question, and that is that in the statute and in the allocation in television, it has been allocated for local.

San Diego has four TV channels, six megahertz each in order to have local service. Otherwise you could serve San Diego from Los Angeles very well, but it wouldn't be local. Also broadcasting has been allocated an inordinate amount of spectrum space because of the contribution it can make to an informed electorate.

Both requirements are statutory, 307(b), 315(a). If you have allocated for information and allocated for local and the TV station in San Diego comes up for renewal, doesn't there have to be some objective standard that says at some point you just haven't done enough local service.

Suppose it was one-half of 1 percent? It was a gem, a jewel of a program or two programs they put on, but that is all they did.

My question to you is, If you have to render local service in San Diego, because that is what the statute says, at what point would you say it was too low, and don't you think the broadcaster ought to know ahead of time, since the scheme is one of local outlets?

Mr. MATER. Henry, I think the real question is, What is the appropriate role or is there an appropriate role for the Government in determining what should be on the air?

I think that is a basic issue and a basic difference between us.

Mr. GELLER. I was assuming that in radio we were willing to get rid of the public trustee scheme. I would even go further in televi-

sion, but I understand that the committee wanted at the least, to gain experience with radio before they turned to television?

I have therefore assumed that the statute remains a public trustee one in television, and that it has 307(b) local outlet and 315(a) informational provisions; I have assumed that it hasn't been amended.

What I have said, if you would go along with me and assume that, is how would you judge the San Diego station when it comes up for renewal as to what it has done in local and information?

Mr. MATER. Has it served its audience?

Mr. SWIFT. How do you determine that?

Mr. MATER. One of the issues might be one of the suggestions I have made before. Have there been complaints, for example, to the Commission or to anybody else?

Mr. SWIFT. Mr. Mater, doesn't that get you right back in to petition to deny and comparative renewal proceedings?

Mr. MATER. No. You have about three different bills addressing this particular issue.

Mr. SWIFT. Right.

Mr. MATER. Yours is the one that includes the public interest standard. Then, appropriately, the Commission looks at it and says, yes, indeed, they have violated *x*, *y* and *z*, whatever it might be.

Many of these complaints are obviously without foundation.

To come back to the remark I made to Henry, I think that is an issue. What is the appropriate role of Government in determining or is there an appropriate role for the Government in determining—whether it is San Diego or elsewhere—what should be available to the audience because once you do that, how far down the road do you go in terms of was this a good program or a bad program?

Mr. SWIFT. You and Henry carry on very enlightening dialog, and you, I think, disagreed on something else in your earlier testimony and I would be interested in you discussing this as well because it follows from what we are saying here.

Essentially what you are saying is that the market will essentially be an important force, a major force, the force that will assure the public interest is met, and Henry has asserted that that is not the case.

I would be interested in you perhaps exploring or expanding on why you think it will, and I would be interested in you and Henry talking about that a little bit.

Mr. MATER. Very briefly stated, I think it is a question of if the station, any station, does not serve the public, if a network does not serve the public, it will pay for it ultimately.

I think it is that simple. That may be oversimplified.

Mr. GELLER. Let me say I think it will pay for it in ratings and in entertainment programing, and I am not saying that denegrating that in any way.

Entertainment is terribly important to the American people, sports, and it is clear that it will do so in news, but when you get around to educational programing, worthwhile educational programs for children, I don't think the network will suffer in the marketplace.

I think it will be quite profitable whether it puts on educational programs for children or not. CBS puts on "Sabrina, the Witch" and it will do very well on Saturday morning. When its competition puts on "Take A Giant Step," they took a beating, and what I am saying to you is that I am not sure the marketplace works.

I am using that just as an example, but the study just came out about children, how important television is to them.

Children listen to radio over 3 hours a day and to television even more than that, and I think it is terribly important that they have available worthwhile programing.

I would count upon public radio doing that rather than trying to make the broadcaster act against his interest, but that requires funding, and we are back to again an alternative system where each system does its own thing.

Mr. WIRTH. We will come back. We have a vote now on H.R. 5539, final passage of the Federal reclamation laws amendments about which Congressman Swift, in particular, has a passionate concern. We have to go over and build a better tomorrow by recording our votes on that. We will have a brief interlude.

Mr. SWIFT. I think Mr. Loevinger has got some seniority on us when we come back.

[Brief recess.]

Mr. WIRTH. If the subcommittee can come back to order.

Mr. Mater.

Mr. MATER. Yes, sir, I would like to clarify something that was said before.

I think there has been a misunderstanding of what I said. I just want to make it clear that in no way was I suggesting that you are in any way less supportive of first amendment rights than I am or that CBS is. I was not trying to say that. I would just like to say that for the record.

Mr. WIRTH. Fine. I think it is appropriate for the record. As we talk about rights and privileges, I think it must be understood that the first amendment is something that is a right that every American has, not just the privileged few.

Mr. MATER. I will agree with that, certainly.

Mr. WIRTH. Let's get back into the discussion. What I would like to do is to go back to the questions that Mr. Swift and I were both asking. How does one determine how the public interest is being met?

How do we go about doing that if we move away from all the mechanisms that we have now?

Mr. Fritts, would you like to—I am sorry, Mr. Swift said he would recognize Mr. Loevinger.

Mr. LOEVINGER. I would like simply, Mr. Chairman, to make one point here.

As Mr. Mater pointed out, the Swift bill, H.R. 5752, does contain the public interest standard. However, what it also does is, it clarifies that to a degree; it doesn't solve all the problems, of course; it doesn't answer all the problems.

Mr. WIRTH. If you will yield for just a minute. I am also on the Budget Committee where, in the public interest, everything has been broadcast about the budget debates. We are in the throes of that right now. I have to go to a budget negotiation. Mr. Swift will

continue and chair. I know Mr. Stephens has some comments he might like to make as well. I want to thank you all for being here and will look forward to seeing you all again soon.

Mr. SWIFT. Please, Mr. Loevinger? If I were you, I would think this was a conspiracy.

Mr. LOEVINGER. I had hoped that Mr. Wirth might hear this comment because I believe that your bill, Mr. Swift, does do much to clarify the public interest standard.

What has happened, as I tried to point out in a very cursory manner both in my prepared statement and in my oral introduction, is that the court of appeals here has really muddied the waters to say the least, or perhaps completely obscured the point to say the most, and while the FCC has applied a public interest standard as it is now in the statute, the court of appeals has told the FCC that it must consider all sorts of essentially extraneous factors.

A broadcasting station in Daytona Beach, Fla., has to be given a demerit because the owner, the corporate owner, has some stock in the New York Times Co., which is utterly absurd, whereas H.R. 5752 says that the public interest standard shall be applied but it shall be applied to the licensee's performance, to the licensee's performance in the marketplace during the preceding license term.

Now, that simply makes good sense; it in effect focuses a great deal of the discussion that has taken place here this afternoon and I think it makes precisely the point that has to be made.

Now, it doesn't solve all the questions of what is the public interest in all situations, but we believe you have to take one step at a time.

If you wait until you have an answer to all the questions, you will never get any of the answers. To take a legislative analogy, you are likely to end up in the same sort of situation as the Criminal Code bill and heaven help us all from ending up in that situation.

It is just too much. This takes a very intelligent and very needed step forward toward a basic stability and therefore we really urge this subcommittee to take action on this bill at this time.

We think it will be a great step forward. In view of what the Senate has already done it will afford ample opportunity to make whatever small adjustments may be needed in language or other technical details in conference.

Mr. FRITTS. This reminds me of the NAB Convention, none of the microphones are handy. I would like to say that regarding the competitive factor in smaller markets, Chairman Wirth alluded to the fact that markets the size of Denver and Chicago had 40 and 39 stations, and so forth.

Markets the size of Indianola, Miss. have daytime AM and 3,000 watt FM stations which we are the only licensees in the community. There are 19 local radio stations within 30 miles of Indianola, 2 commercial television stations, and numerous newspapers.

There is certainly no stifling of any voice; there is no lack of access to signals for listeners and I guess that would be a good indicator of a genuine marketplace.

I must tell you that if those stations don't serve their respective communities, they will wither on the vine because there is too

much competition; there is certainly ample opportunity for expression on all of those stations. I feel that if we can move forward and let the marketplace look after some of these concerns, that in fact it will look after them.

Regarding Mr. Geller's proposal of a 1-percent fee for public broadcasting, I would say there are other ways to fund public broadcasting.

The NAB has established a blue ribbon task force of industry leaders from the private sector and they have spent numerous weeks developing a report which will be forthcoming in the next 2 weeks relative to ways that the private sector, the Congress and all of America can in fact help public broadcasting.

We believe in public broadcasting. We think it plays a necessary role, and we want to support it in many ways. We think a spectrum fee, a grazing fee, if you will, is not the correct way to do it. Anything that goes beyond the cost of regulation we feel is not warranted.

Again, I would say that if a broadcaster does not operate in the public interest, if he is not responsive to his community, he will simply be left by the wayside because the community will not listen to him, the advertisers will not advertise on that station and suddenly he is out of business and someone who is willing to provide that necessary service to the community will move in and indeed he will have to provide that service if he is to survive.

Mr. SWIFT. I have a number of followup questions I would like to ask but I would like to recognize my senior colleague, the charming gentleman from New York, Mr. Scheuer.

Mr. SCHEUER. Thank you very much, Mr. Chairman.

Mr. Fritts, you talk about, in radio, meeting the needs of a community. Where you have a situation of a very great multiplicity of radio stations—in New York I think we have 40 or more—you seem to end up with the situation of narrowcasting. We have a number of stations that appeal to a particular community; all-night news stations, classical music stations, rock music stations, so on into the night.

Does any newspaper think about meeting the needs of the community? Don't they all more or less think about carving out their niche and creating a loyal special interest clientele?

In television where you don't have that kind of a full spectrum, where you really don't have narrowcasting, maybe they have to appeal to the community, but in radio it seems to me you have a qualitatively different situation and a different financial and monetary profit and loss balance sheet challenge.

I don't see any radio station trying to meet the needs of the community. It seems to me that kind of rhetoric applies to television.

Mr. FRITTS. There are many ways to meet the needs of the community. Local news is certainly a way to meet the needs of the community, provide information on what is happening, what is taking place in that community.

I think more than likely every station you are talking about provides some form of news, albeit local or national or a combination thereof.

I know in our situation we have to offer a full plate. Again, it depends on the size market one is talking about. If you are talking

about New York City where there are 40, 50 or more radio stations and signals overlapping the city, or a small community out in the hinterlands, for instance, it is difficult to establish a set of guidelines that are applicable to New York City and also to Indianola, Miss.

Therefore, the market will decide who is a good operator and who is a bad operator.

Mr. SCHEUER. They may not decide who is a good operator and who is a bad operator, but they may decide which station has been successful in creating an image that appeals to a particular loyal slice of the radio listening constituency.

By your criteria and perhaps by mine, that may be a good operator.

I must say I see less of a public policy need for meeting any FCC requirement, in radio than I do in television, where you still have broadcasting and not the immediate possibility of narrowcasting.

Let me ask you and the panel just to shift over for a moment and think about broadcasting. How soon can we expect to be at the point—through advances in telecommunications, satellite broadcasting, a vast proliferation of cable, whatever—how soon would we be at the point where we can look forward to the same kind of proliferation in television as we now have in radio so that in effect your narrowcasting and in effect almost anybody who can identify a particular small slice of the market can come in and broadcast.

It seems in a situation like that Congress could make a much better case for really deregulating, since everybody could have access if they had the moxie, capital, and the astuteness to define a section of the market where there was an unmet need. How soon are we going to be at that point?

How soon is the technology going to permit us to engage in that kind of narrowcasting, where we can feel confident in deregulating.

Mr. FRITTS. My personal opinion, sir, is that it is coming very rapidly. We are on the verge of it right at this time. The multiplicity of video sources already available, coming down through satellite master antenna systems, through cable television, through MDS and through a whole line of other video facilities which are now becoming—now coming into the market, mean that the pie is going to be divided, if you will, to a much greater degree in the video marketplace than perhaps it has been in the past.

I think that you are looking at basically, my personal views on down the road, that it is going to take a specialty type programing as you mentioned, narrowcasting from ESPN. ESPN means entertainment and sports network, which basically programs 100 percent sports programing around the clock, 24 hours a day.

That is narrowcasting in my opinion. Though they cover a wide variety of sports. That could be further delineated to "We carry only boxing on this channel" and 2 years from now "We carry only horseracing," whatever it may be.

I see that as coming very rapidly. I feel we are on the verge of it quite frankly.

Mr. SCHEUER. Can you give me an estimate in terms of years, 5 years, 10 years?

Mr. FRITTS. I think it depends on the various markets, because some markets are already mature in the respect that they have

cable systems in place and those facilities, they have 30, 40, 60 cable channels available in the home right now to view from which means essentially where they had maybe 3 or 4 televisions stations on the old antenna system now maybe they have 60 television stations they can choose from.

Mr. SWIFT. Will you yield my time?

Mr. COLLINS. I appreciate you yielding. I have been listening closely to all this testimony today and I have found it very, very interesting.

I go back to what Mr. Geller said first and several of you repeated, that there has never been a license challenge that was ultimately successful. In other words, the process has proven to be a waste of time and of money. Some of you gentlemen are lawyers. Mr. Loevinger, you have been an FCC Commissioner. I appreciate what you said about the futility of the comparative hearing process, because you were very objective.

The second point I would like to make flows from something you mentioned, Mr. Stephens. I happen to like to listen to news on radio. I just turn on my radio in the car and go to it. This matter of requiring that we have a balance of all types of programing is the most unnecessary requirement that ever existed.

I can tell you how far they carry it in Texas. In Houston they have about three televisions with 50 news wagons running all over town, another television station simply reads it off the wire service once an hour.

No one is interested in hearing news read off the wire service. But all stations feel they must present some news in order to meet the FCC's news programing guidelines.

By the same token, when I listen to my radio news, which is what I always want, I hate to have to see them try to intersperse anything else with it, which some of them try to do.

I thank the gentleman from New York for yielding to me.

Mr. LOEVINGER. This is the position that my client supports 100 percent.

Mr. COLLINS. Thank you very, very much.

I thank the gentleman from New York. I appreciate it, Jim.

Mr. SCHEUER. Thank you, my colleague from Texas.

Would anybody else like to answer the question I asked?

Mr. GELLER. I would just add that no one can tell you because it depends so much on the marketplace, more than it does on the technology. For example, technology will, I think, bring you direct broadcast satellites in 1986, but whether they succeed in the marketplace is not known.

You can go on disks. No one knows whether they will succeed for home delivery. RCA is trying, but you don't know the answer.

Low power has been authorized by the Commission. Assuming the logjam is broken, low power TV stations will come on, serving about 15 miles. They may be successful; they may fall on their face.

There is no question cable is developing. It is now 29 percent national penetration. It is estimated it will be at 50 percent by 1990.

Mr. SCHEUER. I have two homes, one in New York and one in Washington. These are fairly significant metropolitan areas. In neither place am I afforded the privilege of availing myself of cable TV.

Mr. GELLER. Hopefully you will get it soon. It is coming.

I also live in Washington and there is a franchising delay.

Mr. SCHEUER. Same in New York.

Mr. GELLER. You know that, for example, that pay services like HBO, will succeed on cable and on over-the-air, where it's called subscription television.

But it is not clear how many advertiser-based services that are being offered over cable will succeed, there are over 50 of them being offered, besides the sports network you heard of. There are all kinds. Only the marketplace will sort that out. The best study laying out all these things was in the House staff report.

But I don't think they made predictions. The only thing I would say to you is that you are moving very clearly toward a television of abundance. Only the marketplace will answer how soon you get it. You may want to wait, if you are basing revision on whether or not you have abundance, to see it before you actually act.

I have urged revisions in the area because I think the present system is ineffectual; it has large first amendment costs and is ineffectual. But if you are going to move on the basis of competition, that there is a television of abundance, I would suggest while it is coming, you ought to wait until it is here.

Mr. SCHEUER. What is the intellectual underpinning of the public service requirement other than scarcity of access?

Mr. GELLER. But the scarcity is still there, even though there are 10,000 broadcast stations and only 1,700 daily newspapers. If you open up one channel here in FM in Washington or one in AM or TV, you would have numerous applicants for it.

One AM channel opened in Los Angeles and there were 21 applicants for that one channel. There are no channels available now in Washington. So the Government still has to choose among many who would like to broadcast. It still has to choose one and exclude all others, so that the scarcity is there.

The real issue I would pose to you is whether the system you have chosen, the public trustee system, has worked well. Has it worked effectively to serve the public interest? There is where the differences come.

Mr. Schwartzman would answer that it is better than the system I would advocate, which is to scrap it and move on to another one that you have already heard.

I think that a new system would work better, but the scarcity basis for regulation is still there.

The real question is what is the best policy to follow from the point of view of effectiveness, first amendment, and so forth.

That is really a policy choice for you.

Mr. SCHWARTZMAN. Even though Henry has already told you what I would say, I will say it. In fact, though, I agree with almost everything that Henry said, except his guarantee to you that cable will survive and prosper.

This is a marketplace economy and it is not at all clear when we are going to have this technology of abundance.

Cable may not make it. There is evidence that in some markets people are not willing to pay $25, $30, or $40 in 1982 dollars for cable when for $15 or $20 they can get one or two over-the-air pay channels.

Cable may turn out to be a disaster in some markets, particularly urban markets that are not particularly wealthy.

DBS may not make it. Mr. Mater and CBS are working very hard at guaranteeing that the Comsat approach may never get off the ground. CBS would like to use the same spectrum space for high definition television, that is "HDTV."

MDS may not make it. But even when you have a time in the future when the technology is going to provide a lot of options, there are still dangers.

I think it is very important that we not regulate in anticipation of things that may not happen.

For example, it is necessary to maintain, as I think the subcommittee has seen in the common-carrier area, some very careful barriers between excessive concentration of control and content.

Mr. SCHEUER. I don't get that, between what?

Mr. SCHWARTZMAN. Excessive concentration of control and content. I don't want to pick on one company, but let me use Time as a convenient example. If Time owns the cable system or is a franchisee, if there is MDS system in that community that is running the HBO service owned by Time, Inc., and you have a heavy penetration on the part of Time in over-the-air broadcasts through syndication and a heavy Time concentration through Time magazines and the various newspapers, you may have a very, very significant control over the dissemination of ideas in that community on the part of Time, Inc.

I don't want to pick on Time; any number of other conglomerates could potentially maintain this kind of control. That is a danger we have to think about and regulate when that comes.

There is also a need for redundancy. The narrowcasting concept has within it a notion that one segment of the population will rely on one form of service. I think people around Congress are familiar with what has happened with the demise of the Washington Star in the newspaper market. There is much dissatisfaction about the responsiveness of the Washington Post in the absence of competition.

I believe that the marketplace does function in a way differently than others on this panel seem to believe, and I think it functions to promote a kind of competition in service that is very beneficial to those of us who are trying to make sure that the public is informed.

If you have only one broadcaster providing one kind of service, and others in turn, expect that one broadcaster to cover news, then you have a serious problem. And, as is increasingly the case, the industry is expecting public television and especially public radio, to provide that public service. You not only are going to have one entity providing a significant amount of the service, but it is going to be ultimately a Government-controlled entity.

There are lots of dangers ahead. These are not simple solutions. Throughout this whole discussion there is one underlying point I would like to make.

You are dealing here with a conflict between two of the very most powerful institutions in society, Government and the media. These are difficult decisions and there is no easy answer because

you are dealing with immense power and the power to alter the viewpoints and opinions of the very electorate itself.

There is no easy answer and there is a need for the kind of conscientious examination which this subcommittee has undertaken to come up with the answers, but they are answers that no one is going to be happy with.

Mr. STEPHENS. I absolutely agree with his last sentence; you are right.

Mr. Scheuer, back to something you raised earlier, if I may regress a moment.

First, I would like to say it may be beneficial to get back on the track as to what the subcommittee is attempting to accomplish.

First with regard to New York City, and your concept of narrowcasting, you are absolutely right. Broadcasters, radio broadcasters now are attempting to serve the needs of the community, but in somewhat of a different fashion.

Anyone who goes into, say, New York City, is going to look at how the market is being served now, what hole is there in the marketplace, where a certain aired segment is not being served.

So you have to look at the community at large to see what is being served. One of the other hats I happened to wear recently was as chairman of a cable television selection committee. The future that is being discussed here, as Mr. Fritts pointed out as perhaps some years away, it is here right now.

The only thing that is really holding up a multiplicity of television services by the cable is not the public; it is essentially the courts. The litigants are at it in a lot of cases. That is all that is holding it up essentially in New York City with the so-called franchises that are being awarded; it is in the courts; they will have to sort that out.

Chairman Wirth raised the point that I think goes to the next use of this. You, as elected representatives of Congress, have a mandate to perform under the statute, and I think we ought to understand that we are not asking you to abandon that mandate.

Simply, you can't do that. I think what we are suggesting is that there is a different approach to achieve a desired result. As opposed to erecting an erector set of a Rube Goldberg scheme of what is this and what is that, perhaps if we back off a shade and say, is there another way of trying it, just as any legislated act outside of a constitutional amendment is essentially an attempt to solve a problem through a period of trial, it can always be changed; what we are suggesting here—you have enunciated, and the chairman has, with regard to radio—that not only is there a multiplicity of services in the marketplace, but we believe that the people at the constituent level are better able to tell broadcast stations what they want to hear on the air and how are they serving the community than something "writ" in concrete in another area.

We think that is perhaps a desirable approach. We think it is time to at least try it. We think it will accomplish the goals that you and we have in common; that is, serving our constituency in a responsible manner. We think it is time to try it. Thank you.

Mr. LOEVINGER. Mr. Scheuer, I would like to make two comments:

First simply as to Mr. Schwartzman's last comment, I think he illustrates much of the difficulty with his own analysis when he starts talking about the two powerful institutions opposing each other; Government on the one hand, the media on the other.

Anybody who is talking about Government as a single great monolithic entity or the media as a single great monolithic force in society is simply fooling himself.

These are abstractions of such a high generality that they are simply useless for purposes of realistic analysis.

I am sure every Member of Congress knows full well that there is a great diversity of views within the government; that there are various parts of the government, even within Congress itself there is tremendous diversity.

I don't think it is necessary to elaborate on that.

However, to get back and answer your question as to when will these technologies be available, I think it is quite evident and I would be prepared to demonstrate the technologies are available now, this afternoon. We don't need anything except the most minor technological development in some respects, possibly, but all of the technologies for all of the visual aids, programing, news, whatever you can conceive of, delivered to the home, a multiplicity of these are available this very minute.

The second place I quite disagree with Mr. Schwartzman that they are going to fail, some of them will be more widespread than others. It will depend on the community and on various factors, but I can remember when it was said that FM was going to drive AM out of business and when it was said that television was going to drive radio out of business, and all of these things, and yet they have all prospered.

We have more AM, more FM, more television than we ever had before.

However, you are quite right that we aren't going to have it this afternoon or tomorrow afternoon, and the reason is very simple. The regulatory processes of Federal, State, and local government simply don't operate that fast.

The reason we don't have cable, and I, like you, live in the Washington area, and I would be delighted to have it, I happen to have it at a little beach house I have out in Delaware because you can't get good television reception there without it, and we have got lower Delaware CATV and it brings in beautiful reception from half a dozen cities.

We don't have it because they are arguing in Montgomery County and various other places about who should get what and they are going through all sorts of rigamarole. When the regulatory processes permit it, we will have it.

I think that is the answer.

Mr. SCHEUER. Let me see if I can make a distinction. I can understand the theoretical reason for delay in cable, because you have to rip up the streets and essentially create a monopoly, a utility, and that involves a great deal of selection, value judgments, and so forth.

But for the rest of it, the satellite, all of the other things where you can go right from something out there into the home, there is no necessity for judging as between *a* and *b*; it seems to me the

technology permits anybody who has the capital to get into business and if they think they have some new idea, one of those holes in the market that isn't being served, they could get into business.

So why, by any logical standard, should the regulatory processes be a roadblock to the proliferation of all of those kinds of television-like stations, except for the cable TV? What is the rationale for regulation at any level to hold back the technology?

Mr. LOEVINGER. There are reasons with respect to satellite broadcasting. For one thing, as I understand it, I am not an engineer; I am sure there are those who would answer you much more adequately on that particular subject, but the number of parking spaces as it were in the geosynchronous orbit, that is, the stationary satellites above the Earth that broadcast or radiate on down to a particular area, is somewhat limited.

There is still a lot of space up there, but it isn't an unlimited space, and the space is probably more limited than the spectrum itself.

There also has to be regulation of the spectrum usage so that there isn't interference between satellites, there isn't interference between satellite transmission and land mobile, broadcasting, or whatever.

So there is a reason for some kind of regulation.

On the other hand, if you are asking why does it take so darned long, I don't have any good answer to that and I am not sure that anybody else does, except that that is the way the process operates.

Now, I agree with the implicit assumption of your question that we should be moving faster, and I hate to be rude enough to return to the subject of the hearing, but I suggest that if 5752 were adopted, it might perhaps simplify matters at the FCC just a little so perhaps that agency could move a little faster on some of these other things.

Mr. SWIFT. With the length of the hearing you would think the topic was sex and violence on television. Let's see if we can't ride this horse into the barn. A couple of things I would like to get on the record. I think very often when we here in Congress discuss broadcasting, we think of the big and rich, which may well be the networks, large television stations in the major markets, and so forth, and forget that a great many, particularly radio stations, but small television stations as well, deal with somewhat different problems.

I would like to explore with two gentlemen here who own and operate small broadcasting facilities, get some comments with regard to the proportional onerousness of a variety of regulations given size.

That was stated about as badly as I think a question can be stated.

What I am suggesting is that when all stations must do the same thing, it seems to me that is proportionally a larger burden on small stations. Starting with Mr. Fritts, I wonder, could you comment on that, recognizing you represent an organization that has big/small, networks, the whole "schmear."

Mr. FRITTS. I think there is no question that the burden of regulation is greater on a smaller station than it is on a larger station. To give you a case in point, the recent renewal procedures of radio

station licenses in the deregulatory scheme at the Federal Communications Commission level has been changed somewhat along the lines of those which have been proposed before this committee.

From my personal viewpoint, the previous way we renewed licenses took my administrative assistant and myself 4 months of working from either 6 or 7 o'clock at night until 11 o'clock at night just to analyze the percentage of the composite weeks of all of our various stations.

Mr. SWIFT. How many computers do you have?

Mr. FRITTS. We have zero; we are the computers in that size market. We have zero computers. I doubt—I guess some markets probably the computers would help on that. We are talking about maybe 5,000 radio stations in this category, probably under markets of 50,000. That is a wide sweeping number across this country.

The FCC changed that process and we filed our renewals in 3 days for the same number of stations and that is the effect that the deregulation had on our operation. There has been no decrease whatsoever in our service to the public. It is just a matter that we don't have to go through the paperwork procedure and burden our staffs and the Federal Communications Commission with that amount of paperwork.

Mr. SWIFT. Not counting any like yourself who may float between various stations, what is the average number of employees you have assigned exclusively to each of your stations, or do you operate that way? Is that a fair question?

Mr. FRITTS. Not exactly. I can say that our employment in the largest station we have has 15 full-time employees, and I think 3 part-time. The other range down to as low as four full-time employees and something like six or eight part-time employees.

Mr. SWIFT. Do you have a centralized programing system at all?

Mr. FRITTS. No, sir.

Mr. SWIFT. Are commercials centralized?

Mr. FRITTS. No.

Mr. SWIFT. Each one operates pretty much——

Mr. FRITTS. Each one operates autonomously within its own community.

The banking is set up and structured in the community; the entire station is geared toward each of the respective communities. The managers have the responsibility to make sure they operate along the lines that those communities would like for them to operate.

Mr. SWIFT. Mr. Stephens, could you tell us a little of your experience?

First of all, what size market?

Mr. STEPHENS. Denver is variously the 20th, 21st market. I am probably one of those odd breed of cat who is really a small market operator in a major market.

I do part of the morning news team, I function as a sales manager, besides wearing a few of these other hats.

I am majority owner of the corporation, which—the corporation sits before you today in essence.

My problems are somewhat similar to Mr. Fritts'. This is not a major corporate operation. We have NBC as a network affiliate. That makes us sound corporate, but not really.

I was toting up today's list of employees, probably 15, 16 full time; one part time. The written processes I have outlined in my written remarks; it is part of the record.

An exercise is what it amounts to. I would applaud the postcard situation as well. I would add one thing: Not one thing has changed at our station with respect to the FCC's deregulation.

We are now able to concentrate more on doing what it is we do as opposed to reporting what it is that we do.

So in that sense there has been no adverse effect on deregulation. I am just able to put more money into programing. I think that is one thing.

Mr. SWIFT. As we talked about claim-jumping, Mr. Mater indicated horrendous costs that CBS had to go through with one of its O. & O.'s, but perhaps you are a more inviting target because of your size; they are less likely to go after you or somebody in Indianola, but on the other hand, what kind of legal fees do you think—if none of you have gone through it, you must have heard as you talk to broadcasters—in the smaller markets, what kind of legal fees do you deal with?

Mr. STEPHENS. I am not sure I would qualify as smaller markets, but obviously smaller than 19 and up. As recently as about 6 or 7 years ago there was a license challenge in Denver—it wasn't a license challenge; it was a hearing which really involved somewhat the same thing.

The legal fees, this is perhaps a decade ago, were well over $100,000 I know that, to a station in Denver.

Mr. FRITTS. The problem is that the same rules that apply for CBS apply in Indianola, Miss., and the lawyer has to do the same amount of work he does in Indianola that he does with CBS, granted somewhat less I am sure because of the size of their coverage and their corporate structure.

Nonetheless, the legal fees I think one would anticipate at least upward of $75,000 to go through a full-fledged comparative hearing.

Whereas if one wants to protect the public through the petition-to-deny process, which this legislation would do, and would have the same effect quite frankly that the comparative renewal process would do, it is much more fair to the broadcaster to be able to answer the petition-to-deny process without the full-fledged comparative hearing and the associated costs that go along with it.

Mr. SWIFT. Do you have a comparative cost for a petition to deny?

Mr. FRITTS. No; I really don't.

Mr. SWIFT. What does it cost you in legal fees just for a clean renewal where there is no petition to deny?

Mr. FRITTS. It depends on the previous versus the current.

The previous legal fees were relatively expensive because of the composite week checking. We did all of the work ourselves.

I must tell you that we tried to do the work to keep it out of the hands of the Washington lawyers as much as possible. We bring it, let them review it before we file it. So our fees would probably not be representative.

I have heard it is not uncommon for a normal renewal, small market station to be in the area of $2,500 to $3,000 without any problems.

Now, if there are problems that the lawyer has to get on the phone and talk back and forth, run over to the FCC, then the costs escalate from there.

Mr. SWIFT. Mr. Mater.

Mr. MATER. I was just going to add in due deference to Mr. Fritts, I suggest if he was going through a full comparative renewal hearing, he would indeed turn to the lawyers in Washington even as we did. I am not in any way demeaning the communications bar of Indianola, but I just think there are more of them here and they are better versed on the subject.

I doubt that they have cut rates for Indianola. I think that we spent, as I said, in the neighborhood of $2 million a few years back, and it was a substantial sum then, to defend our license.

The $75,000 type of figure I think is way low.

Mr. FRITTS. Let me respond to that briefly.

Maybe you misunderstood what I was saying. That for a common normal renewal, we do the work on that. Fortunately we haven't had a comparative filing against us, but obviously we have had questions asked of us for our political file, and so forth. We automatically grabbed a Washington lawyer for that, but just for a normal standard procedural renewal of doing the checking over the forms, so forth, prior to the dregulation at the FCC, that is what I was referring to.

Mr. LOEVINGER. Mr. Swift, I am probably the only man here who will lose money if this bill is enacted.

Mr. SWIFT. Mr. Schwartzman?

Mr. SCHWARTZMAN. Again, some of the historical figures here, and some of the discussion of the litigation costs and the kinds of records that have to be kept refer to a world that left us when the FCC took its first deregulatory steps. I think that is important, even before television deregulation. While there are problems that merit concern, which the broadcasters have articulately brought to Washington over the years, I don't see that the legislation that is the subject of this hearing is related to solving those problems. That is point No. 1.

I should also add that the extension of license terms has had a significant effect by just cutting those costs down right there. That is relief that Congress has already afforded.

It is just not a serious problem.

In 1979 the FCC staff handled 19 petitions to deny. There are 10,000 licensees. In 1980, 17. In 1981, 57. We are not talking about a big problem. I think that you are throwing away the baby with the bath water. What do you do, even in a small market, when you have a case such as the one I have, in which somebody who is a significant landlord in the community editorializes against a federally financed low-cost housing project in order to protect his substandard housing?

You must have some sort of mechanism to avoid that kind of abuse by the only radio station in a community. We have got real problems.

We have got another case that involved a broadcaster who editorialized in favor of his own cable television franchise application before the city council. It was the only VHF television station in the market.

There is some need for some kind of control.

I am suggesting that this isn't something that happens frequently. Yes, there are costs, but in a free enterprise system there are always risks. There is a cost of doing business. If the cost of lawyers, which are known in advance—when somebody goes in and decides they want to be broadcasters—seem prohibitive, maybe they should open a newspaper.

Everybody who has an FCC license knew or could have found out exactly what they were getting into. I don't think it is unreasonable to expect some kind of system of laws to insure the public airways are going to be regulated properly.

We can talk about how to change it, but just saying it is costly, expensive, so let's get rid of all the costs, is ignoring the major policy problems.

Mr. SWIFT. If I might get a couple of questions in. In the specific instances you talk about you find the fairness doctrine an inadequate method of relief?

Mr. SCHWARTZMAN. Yes, in specific instances it has been.

Mr. SWIFT. And petitions to deny?

Mr. SCHWARTZMAN. Petitions to deny are involved in one of the cases I alluded to. I am trying very hard not to name names or get into specifics. Both are in the litigation process, but in one instance it is a matter of public record that an Administrative Law Judge has recommended that the broadcaster's licenses be denied, for a series of abuses, including a number of other things I haven't mentioned.

Mr. SWIFT. Mr. Stephens.

Mr. STEPHENS. I object, Mr. Schwartzman. To raise that kind of a thing, knowing that you had relief right in front of you, I think is a horse of a different color and I think it ill-serves the purpose that you come to this committee for.

You know about access and the responsive equal time; I don't know that issue is even raised.

Mr. Swift, with regard to the public interest standard, a distinguished American, a past FCC Commissioner, Benjamin Hooks, said that the public interest standard is whatever four members of the FCC say it is. I think that is really what we are talking about here today.

Try to get it out of the political arena, if you will, so that when commissioners are appointed, this thing doesn't lurch, if you will, left to right, and that we get it on some kind of a track that lasts beyond political appointments. That is it.

Mr. MATER. If I might just add, I am a little surprised, Mr. Schwartzman. I thought frankly that you would equally support H.R. 5242, which is one of the bills here, because all it does is reduce the paper work, and move the process forward.

It doesn't deny the existence or the right of people to file petitions to deny. Instead, it says that the Commission must act on them expeditiously and there is nothing wrong with that. In fact, I think you should feel the same way.

Mr. SCHWARTZMAN. If I may, Mr. Mater, as I did tell Congressman Collins before, we favor any number of procedural reforms to speed up the process. To have a right to file a petition, but to change the standard and to change the burden of proof is a right

without remedy, however. What we are talking about is maintaining a system that provides some sort of real reasonable opportunity. Sure, we are oppressed, representing small nonprofit entities, by the tremendous amount of litigation. Again, to bring it closer to home, the three networks are the most egregious of the litigators. I would suggest that, so far as I know, there is only one law firm in Washington has done your outside work all these years, and has done it eloquently and magnificently. Maybe if you had put it up for competitive bidding, you would be able to lower those costs a little bit.

I just think that the need for procedural reforms and eliminating some of the buildup of process should be separated from whether or not we need some public interst regulation in the broadcasting industry.

Mr. LOEVINGER. Mr. Schwartzman's figures are inaccurate and misleading. There are many more than 10,000 broadcast licenses authorized, but they don't all come up for renewal each year. So that to talk about 10,000 is meaningless in that context.

More importantly, he said broadcasters know what they are getting into, therefore they shouldn't complain. The fact is that the great majority, I believe almost every one of the members of the group that I represent, got their broadcast licenses before 1969, when they believed that the principles I have adumbrated, and many of them were asked to come into broadcasting by the FCC because they were leading members of the community; they had the news resources and various other things of this sort, and they believed then that the principles which had been upheld by both the FCC and the courts was that if they did their job properly and served the public interest in their communities, their licenses would be renewed.

It is only in the mess that has occurred since 1969 and the matters that I have referred to very briefly that they have been put at peril, and therefore, if we pass your bill, sir, I think we may return to some degree of the stability we previously had and on which the major broadcasters of this country did rely when they entered the field.

Mr. SWIFT. I haven't heard the word "adumbrated" in 20 years.

Mr. Geller.

Mr. GELLER. I will be very brief. There are 17 comparative renewals pending at the FCC. Three of them involved television. The Commission has issued an instruction on March 4, 1982, in a radio comparative renewal to finally give the permit to a challenger rather than the incumbent. The incumbent was Simon Geller, no relation.

In radio it doesn't cost anywhere near the amount in TV. In television the incumbent will pay at least $1 million, I think in legal fees, if you run through a full hearing, but in radio I think, it is charged according to the field.

Finally, I just want to reiterate what I said, that it is all very well to talk about performance in the marketplace and what the people want, but if you keep the mandate of the statute, the public interest standard, as I heard several people say, then the question is, What is operation or performance in the public interest; if you keep it vague, the way it is urged here, it seems to me that is

anathema in this first amendment area, makes no sense at all, and really the claim is, just look at the programs and somehow renew me. If you are going to keep this standard, the first amendment demands that you be as objective as you can, so the people know with certainty what the ground rules are. I thought your question got to the heart of it.

Mr. SWIFT. Thank you very much. I would comment and then defer to my colleague from New York if he has any closing remarks. I have always believed that both the public interest groups and broadcasters perhaps made more of the comparative renewal than they should in that we have had testimony here that it doesn't happen very often.

On the other hand, it seems to me that it does not in the long term contribute to the public interest when you have other remedies and therefore I introduced my legislation because I think it would make good public policy.

However, in the opening statement that the chairman of the full committee made in a broadcast hearing some months ago, and in the opening statement of the chairman of the subcommittee today, I think those of us who feel this is good public policy have been given some parameters in which we are going to have to work.

I think to ignore those parameters as we try to proceed is to spin our wheels, so that I think as all of us take the exchanges of opinion and viewpoint and concern and public policy debate that has been carried on here today, as we take that home and think about it, I think we have been given some parameters of the art of the possible as far as the subcommittee is concerned, and I would be interested in working with all of you to the end that we be able to pass some legislation that is going to be able to earn support of those members of leadership on this committee that have told us I think rather directly where they stand.

To do otherwise is, I think, probably to see no legislation this year, and that does not seem to me to be to the benefit of the industry or the public.

Any comments, Mr. Scheuer?

Mr. SCHEUER. No further comments, Mr. Chairman. It has been an extremely interesting hearing.

Mr. SWIFT. The committee is adjourned.

[The following letters were received for the record:]

MOODY BIBLE INSTITUTE
OFFICE OF THE VICE-PRESIDENT

May 20, 1982

Honorable Timothy Wirth, Chairman
Subcommittee on Telecommunications,
Consumer Protection and Finance
Committee on Energy and Commerce
Room 2454 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20505

Dear Representative Wirth:

The Moody Bible Institute of Chicago ("Moody"), licensee of eleven AM and FM radio stations through the United States, hereby comments on H.R. 5752, a bill to amend Section 309 of the Cummunications Act and substantially eliminate comparative license renewal hearings.* Moody strongly urges Congress to adopt legislation such as H.R. 5752 which would require the Federal Communications Commission to grant license renewals upon finding that the operation of a station has been free of serious violations of the Communications Act or FCC regulations, and that the broadcaster is otherwise qualified to remain a licensee. Comparative renewal hearings, which have so burdened incumbent licensees and taxed the FCC's resources over the years should be eliminated in all cases where these findings can be made.

Section 309 of the Act presently denies a broadcast licensee who has been acting in the public interest a reasonable expectation that his license will be renewed. It now permits even a frivolous renewal challenger to file a competing application which can delay for years renewal of a license where the incumbent has performed consistent with the FCC's Rules and Regulations and otherwise acted in the public interest. The experience of one of Moody's stations in attempting to have its license renewed clearly demonstrates these shortcomings of Section 309 of the Act.

The license renewal of WMBI-FM, Moody's station in Chicago, Illinois was tied up for over two years by a party who filed a competing application. During this entire period the challenger's application was clearly defective under FCC rules and it took no action to cure these defects.

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* Moody's eleven stations are: WMBI and WMBI-FM, Chicago, Illinois; WCRF (FM), Cleveland, Ohio; WDLM and WDLM-FM, East Moline, Illinois; WMBW (FM), Chattanooga, Tennessee; KMBI (AM) and KMBI (FM), Spokane, Washington; WGNB (AM) and WKES (FM), St. Petersburg, Florida; and WRMB (FM), Boynton Beach, Florida.

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Moody's renewal application was tendered for filing on July 31, 1979. In November of 1979 the competitor, Open Media Corporation, filed its application for WMBI's facilities. It made no allegation that Moody had in any way fallen short of its commitments to the FCC, or otherwise not performed in the public interest. Moreover, Open Media did not argue that it could provide a broadcast service superior to that offered by Moody. Open Media's application failed to provide the necessary engineering and financial information which was required by the Federal Communications Commission. Open Media had, for example, specified Moody's transmitter site without its consent, and the site could not be made available to it. In addition, Open Media had not demonstrated the availability of <u>any</u> funds with which to construct its proposed station, a clear FCC requirement.

For these reasons, Moody filed a Motion to Dismiss the Open Media application on January 15, 1980. Open Media responded with a request for additional time (until March 1, 1980) in which to answer. It said it was retaining counsel and that more time was required to formulate a thorough response. Moody opposed this request on January 29, 1980 and stated that it would vigorously contest any similar future extensions. The ink had hardly dried on Moody's opposition when Open Media requested a second extension by letter dated February 28, 1980. It said it would need another month to respond since its President had been ill and unable to work for nearly all of the extended time period. Open Media said that extensions beyond April 1 were not anticipated. Moody opposed this second request on March 12, 1980.

A third request for an extension - until April 16, 1980 - was submitted by Open Media on April 1, 1980. Applicant's President was again ill. Moody opposed this request on April 2, 1980.

On April 21, 1980, five days after its response would have been due had the FCC granted its three requests for extension of time, Open Media filed a "Motion to Defer Ruling" on the Moody Motion to Dismiss until July 15, 1980. Open Media said it has ascertained that there was a reasonable likelihood that its application could be amended to remove the conflict with Moody, and that it was preparing an amendment which would be filed by July 15, 1980.

On July 16, one day after it had promised to amend, Open Media said it could not do so until August 25, 1980. Technical problems had been encountered in preparation of the amendment, it said.

On August 21, 1980, counsel for Open Media submitted no amendment and instead advised only that a transmitter site had been located from which the proposed station could be operated without a conflict with WMBI-FM. The amendment, Open Media said, would be submitted by September 31, 1980.

Despite the pendency of Moody's Motion to Dismiss and Open Media's persistent failure to amend, the Commission accepted the Open Media application for filing on August 27, 1980, and placed it on a "cut-off" list. The list stated that petitions to deny the application had to be filed by October 7, 1980. On that date, Moody filed such a Petition and made comparable arguments to those raised in its Motion to Dismiss filed nearly nine months earlier. Open Media did not respond.

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Despite the pendency of Moody's Motion to Dismiss and Open Media's persistent failure to amend, the Commission accepted the Open Media application for filing on August 27, 1980, and placed it on a "cut-off" list. The list stated that petitions to deny the application had to be filed by October 7, 1980. On that date, Moody filed such a Petition and made comparable arguments to those raised in its Motion to Dismiss filed nearly nine months earlier. Open Media did not respond.

On July 23, 1981, the Commission sent a letter to the President of Open Media requesting that he advise the agency within thirty days whether it intended to prosecute its application. On August 21, 1981, Open Media requested that it be given more time, until October 30, 1981, to amend its application.

On November 19, 1981, after two years of inaction by the FCC, Moody requested that the Commission either dismiss or deny Open Media's application for failure to prosecute. Instead, on November 24, 1981, the Commission gave Open Media yet another chance to act. By letter it requested that Open Media state its intention to prosecute its application within seven days. Open Media failed to respond. Finally, on December 15, 1981, nearly two and a half years after Moody sought renewal of its license, Open Media's application was dismissed.

This series of events makes clear that Section 309, intended to protect the public interest, can and does lead to a contrary result. In cases such as this one, the time, effort and resources of an incumbent are diverted from the business of broadcasting to attempting to remove the cloud placed over its licensee by a frivolous renewal challenger. Under present FCC procedures, to create this unfortunate state of affairs a competing applicant need only file a skeleton application. Regardless of the incumbent's past service to its community of license it is forced to defend itself at considerable expense against a phantom opponent with no past broadcast record.

For these reasons, Moody supports legislation such as H.R. 5752 which would amend Section 309 of the Communications Act so that the FCC could consider a competing application at renewal time only if the incumbent is found to have engaged in serious violations of the Act or the FCC's Rules, or is otherwise not qualified to remain a licensee. Such legislation would provide broadcasters who are operating in the public interest with reasonable certainty that their licenses will be renewed, an expectation to which they are clearly entitled.

Moody requests that these comments be made a part of the Subcommittee's formal record with regard to H.R. 5752.

Sincerely,

E. Brandt Gustavson

EBG:jt

cc Bruce Yannett, Counsel
Subcommittee on Telecommunications
Consumer Protection and Finance
Committee on Energy and Commerce
Room B-331
Rayburn House Office Building
Washington, DC 20515

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POST-NEWSWEEK STATIONS, INC.

July 14, 1982

Dear Chairman Wirth:

I regret that I wasn't able to testify before you personally concerning the proposed reform of the renewal process for television broadcast stations on May 6, 1982.

As President of Post-Newsweek Stations, I feel very strongly about this issue. As you know, our Miami television station, WPLG, was subject to renewal challenges in both 1969 and 1972 and our Jacksonville station, WJXT, was subject to three renewal challenges in 1972. Those renewal challenges diverted our personnel from their real job of running our stations and, since good journalism inevitably leads to controversy and criticism, even seriously threatened to chill the commitment of station personnel to engage in vigorous and effective coverage of their communities.

In the Florida cases the comparative renewal mechanism was used as punishment for our having taken our public-interest responsibilities seriously in the communities which we served, and there were several statements by Nixon Administration officials suggesting that the process be used against The Washington Post Company because of its reporting on Watergate. Indeed, shortly before the Jacksonville challenges a CREEP official advised persons who later filed competing applications about the comparative renewal process. The ability to abuse the comparative renewal mechanism in that way is an important reason why it should be abolished.

The process is also inherently unfair, because, unlike the challenger, the renewal applicant must defend a multitude of decisions and actions taken over a period of time by a large staff, many of whom are highly visible to the public. It is easy for the outsider three or five years hence simply to allege shortcomings in the conduct of a particular individual or in the handling of a particular incident. This mischievous second-guessing, exacerbated many times over by extremely burdensome discovery, becomes the fodder of renewal challenges. The challengers, on the other hand, can contrive an application focussing on standards irrelevant to the renewal applicant, and, since they have no past broadcast record in the community to test against the incumbent, can promise the moon. It is therefore impossible in any meaningful sense to compare a renewal applicant's past performance with a new applicant's future proposals, however hard one tries; yet that is what the comparative renewal process asks of the Commission.

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I referred earlier to the discovery burdens imposed almost exclusively on the incumbent because it alone (unlike the challenger) has a record to defend. Just one of the hundreds of discovery questions that we were required to answer entailed looking through 14,000 pages of station records in order to compile wholly insignificant information about public service announcements that we had broadcast over the past three years. This process, repeated many times over, reinforced our belief that the comparative renewal process itself was being used by at least some of the challengers as punishment rather than in actual expectation or hope of using the frequency to serve the public. The expense, the human toil, having to operate for years with a cloud over our heads -- these were among the penalties that were inflicted on us by the comparative renewal process.

And for what? By every meaningful standard our stations ranked at the very top among all stations in Florida and among all affiliated stations in comparable-sized markets. Nobody gained as a result of our ordeal. The Commission and the public were burdened with the expense of a costly and meaningless proceeding. Those of the challengers who entered the fray in good faith were totally misled as to their chances of success against stations with such outstanding records. In short, the comparative renewal process served absolutely no useful purpose.

This is not to say that we reject the public trustee concept for television stations. The PNS stations believe they do have an obligation to serve their communities and they seek to operate consistently with that responsibility. We are also willing to be judged by our performance. But the comparative renewal proceeding is not the way to encourage service by television stations in the public interest. If a station is doing a good job, then its renewal application should be granted. If it is doing a poor job, it doesn't deserve a license, absent unusual and special circumstances. But such decisions should not be affected by whether a competing application has been filed.

In short, the trade-off for a rational, fair, predictable and consistent renewal policy -- a goal which we think needs no further justification -- is good service to the public. A number of approaches have been suggested for determining whether a licensee has done a good job. We favor reasonable quantitative standards, as have many thoughtful broadcasters and non-broadcasters.

I would be happy to meet with you and other members of the subcommittee or their staffs to discuss further our views on the comparative renewal process. In the meantime, please associate my letter with the subcommittee's hearing record on this issue.

Sincerely,

Joel Chaseman

Joel Chaseman
President
(202) 342-3810

[Whereupon, at 5:35 p.m., the hearing was adjourned.]

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